

**FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A.**  
**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS**

In accordance with the decision by the Board on 27 October 2009, notice is hereby given of a Special Meeting of Shareholders of FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A. (FCC) to be held in Barcelona, at Hotel Barcelona Center, located in c/Balmes 103-105, Barcelona, at 13.00 hours on 30 November 2009, at first call and, in the event of there not being a quorum, on 1 December 2009 at second call, in order to discuss and, if appropriate, approve the items on the following

**AGENDA**

1. To approve the convertibility of the Company's bonds that are exchangeable for shares, issued for an amount of four hundred and fifty million euro under the decision by the Meeting of Shareholders on 18 June 2008 by virtue of an Executive Committee decision dated 6 October 2009, by delegation of the Board of Directors on 30 September 2009, to enable the Company to cater for exchange requests from bondholders by delivering newly-issued shares.

To totally override the shareholders' pre-emptive subscription right. To increase capital by the amount required to attend to the conversion of the bonds up to an initially envisaged maximum of twelve million euro, subject to amendments on the basis of the terms and conditions of the bonds.

Delegation of powers to the Board of Directors and the Executive Committee to execute these resolutions, including powers to sub-delegate.

2. To approve a buyback programme of shares of Fomento de Construcciones y Contratas, S.A. whose purpose is to enable the Company to fulfil the obligations derived from the issuance of exchangeable bonds and to reduce the Company's capital. To approve a reduction of the capital of Fomento de Construcciones y Contratas, S.A., through the amortisation of own shares for a par value equivalent to the number of new shares of the Company issued to attend to requests for exchange or conversion from holders of the Bonds.

Delegation of powers to the Board of Directors and the Executive Committee to execute these resolutions, including powers to sub-delegate.

3. To authorise the Board of Directors and the Executive Committee to interpret, remedy, complement, execute, register, delegate powers and adapt the decisions adopted by the Meeting of Shareholders, with express powers to sub-delegate.
4. To approve, where applicable, the Meeting's minutes in any of the ways established in article 113 of the Consolidated Public Corporations Act, or application of the provisions of article 114 of that law.

**Supplement to notice**

In accordance with article 97.3 of the Consolidated Public Corporations Act, shareholders who own at least five per cent (5%) of capital may request that a supplement be added to the notice of meeting, including one or more items on the agenda. For those purposes, shareholders must state the number of shares they own or represent. The shareholders who wish to exercise that right must send that supplement via certifiable means to the company's registered offices (c/ Balmes, 36, Barcelona) for the attention of the General Secretary within five days from publication of this meeting announcement. The supplement must be published at least fifteen days prior to the date scheduled for the General Meeting at first call.

#### **Attendance and representation rights**

In accordance with article 18 of the Articles of Incorporation, shareholders who own one or more shares are entitled to attend the general meetings of shareholders provided that ownership is registered in the corresponding book-entry register at least five days before the meeting date and this can be accredited by exhibiting the pertinent certificate of legitimation or by any other means permitted by the legislation in force.

Any shareholder entitled to attend the General Meeting may be represented by another person, who need not be a shareholder. Representation shall be conferred according to the terms and within the scope established in the Consolidated Public Corporations Act, in writing, and separately for each General Meeting, apart from the exceptions regulated by the Consolidated Public Corporations Act.

In the event of a public request for proxies, the provisions of article 107 of the Consolidated Public Corporations Act and article 114 of the Securities Market Law will apply.

If a supplement is added to this notice of meeting as a result of the exercise by shareholders representing at least 5% of capital of the right to add additional items to the agenda, shareholders that have granted proxy may:

- a) Grant proxy again with the corresponding voting instructions, with respect to all of the items on the agenda (including the initial items and those items included via supplement), in which case the previously-granted proxy will be understood as revoked; or
- b) Complete the corresponding voting instructions for the initially-appointed proxy (without being able to appoint another), in the same manner as was done in the first place.

#### **Right to information**

Shareholders may examine the following documents, which will be submitted to the General Meeting for information or approval, at the company's registered offices or may have them delivered immediately and free of charge upon written request:

- The necessary directors' reports for those resolutions included in the Agenda that require a report for the purposes of articles 144, 292 and 293 of the Consolidated Public Corporations Act.
- The text of the proposed resolutions submitted to the General Meeting of Shareholders for approval.
- A report by an auditor, other than the Company's auditor, appointed by the Mercantile Register for the purposes of articles 292 and 293 of the Consolidated Public Corporations Act.

All of the documents listed above can also be viewed or downloaded at the company's web site: [www.fcc.es](http://www.fcc.es)

Up to the seventh day prior to the scheduled meeting date, shareholders may request from the Board of Directors any information or clarification they require or submit any questions in writing regarding the Agenda items. Shareholders may also request information or clarification or submit questions in writing about the publicly-accessible information that has been filed by the Company with the Comisión Nacional del Mercado de Valores since the immediately preceding General Meeting, which was on 10 June 2009. For those purposes, shareholders may use the company's web site ([www.fcc.es](http://www.fcc.es)) or contact the Stock Market and Shareholder Relations Department (calle Federico Salmón, 13, 28016 Madrid. Telephone: 902 109 845. E-mail: [ir@fcc.es](mailto:ir@fcc.es)).

Barcelona, 28 October 2009.- The Chairman of the Board of Directors

**MOTIONS TO BE SUBMITTED TO THE SPECIAL MEETING OF SHAREHOLDERS OF FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A. (THE "COMPANY") ON 30 NOVEMBER 2009 AT FIRST CALL AND ON 1 DECEMBER 2009 AT SECOND CALL**

**MOTION ONE:** Regarding item **One** on the Agenda: *To approve the convertibility of the Company's bonds that are exchangeable for shares, issued for an amount of four hundred and fifty million euro under the decision by the Meeting of Shareholders on 18 June 2008 by virtue of an Executive Committee decision dated 6 October 2009, by delegation of the Board of Directors on 30 September 2009, to enable the Company to cater for exchange requests from bondholders by delivering newly-issued shares.*

*To totally override the shareholders' pre-emptive subscription right. To increase capital by the amount required to attend to the conversion of the bonds up to an initially envisaged maximum of twelve million euro, subject to amendments on the basis of the terms and conditions of the bonds.*

*Delegation of powers to the Board of Directors and the Executive Committee to execute these resolutions, including powers to sub-delegate.*

At the time notice is given of this Meeting of Shareholders, the following documentation is made available to shareholders: the full text of the motion as set out below; the terms and conditions of the bonds to be issued, attached as **Appendix I** (in English and Spanish, the latter for information purposes only); and, for the purposes of articles 144, 292 and 293 of the Consolidated Public Corporations Act, the report by the Board of Directors justifying this proposal, as **Appendix II**; and the mandatory report by an auditor other than the Company's auditor, appointed by the Mercantile Register, attached as **Appendix III**.

As far as the overriding of pre-emptive subscription rights is concerned, those reports were drafted having regard to article 293 of the Consolidated Public Corporations Act and Act 3/2009, of 3 April, on structural amendments, which came into force on 4 July 2009.

On the basis of the foregoing, the full text of the motion laid before the Special Meeting of Shareholders of the Company under item one on the agenda is as follows:

*"To approve the convertibility of the Company's bonds that are exchangeable for shares, issued for an amount of four hundred and fifty million euro under the decision by the Meeting of Shareholders on 18 June 2008 by virtue of an Executive Committee decision dated 6 October 2009, by delegation of the Board of Directors on 30 September 2009, to enable the Company to cater for exchange requests from bondholders by delivering newly-issued shares.*

*To totally override the shareholders' pre-emptive subscription right. To increase capital by the amount required to attend to the conversion of the bonds up to an initially envisaged maximum of twelve million euro, subject to amendments on the basis of the terms and conditions of the bonds.*

*Delegation of powers to the Board of Directors and the Executive Committee to execute these resolutions, including powers to sub-delegate."*

**A. To approve the convertibility of the Bonds**

To authorise that the Company's bonds that are exchangeable for shares (the "**Bonds**"), issued for an amount of four hundred and fifty million euro (€450,000,000) under the

decision by the Ordinary Meeting of Shareholders on 18 June 2008 by virtue of an Executive Committee decision dated 6 October 2009, by delegation of the Board of Directors on 30 September 2009, to be converted into shares of the Company to enable the Company to cater for exchange requests from bondholders by delivering newly-issued shares in accordance with the Terms and Conditions of the issue. Accordingly, once this decision has been duly registered with the Mercantile Register, the condition established in the Terms and Conditions of the Bonds in order for the Issue to be able to fulfil its obligations by delivering newly-issued shares of the Company shall be deemed to have been fulfilled.

The conditions and forms of conversion shall be those established for the exchange in the Bonds' Terms and Conditions approved by the Executive Committee on 6 October 2009 and completed by the Company's Managing Director on 22 October 2009 under the powers delegated to him by the Executive Committee.

**B. To totally override the pre-emptive subscription right.**

To override the pre-emptive subscription right as required by the decision to render the Bonds convertible into newly-issued shares of the Company, which would otherwise correspond to the Company's shareholders with respect to the Bonds in accordance with article 293 of the Consolidated Public Corporations Act.

The suppression of the pre-emptive subscriptions rights held by the Company's shareholders is duly justified because it is in the Company's interests and because of the reasons set out by the Directors in their report, which has been made available to the shareholders as from the time notice was given of the Meeting of Shareholders. That the content of the Directors' Report is correct is ratified by a report issued by an auditor appointed by the Mercantile Register who is not the company's auditor, which has also been made available to the shareholders as from the time notice was given of the Meeting of Shareholders.

Without prejudice to the foregoing, as provided in the Directors' Report, the Board of Directors of the Executive Committee will, when the time comes, adopt the appropriate measures to avoid the dilutive effect that the issuance of the new shares will have for the shareholders, by making use of the powers delegated by this Meeting of Shareholders.

**C. To approve the increase in capital needed to cater for conversion of the Bonds**

In accordance with the provisions of article 292 of the Consolidated Public Corporations Act, approve an increase in the Company's capital stock by the amount required to attend to requests from the holders of the Bonds to convert them under the Terms and Conditions up to an initially envisaged maximum of twelve million euro, but subject to any amendments as provided in the Terms and Conditions.

That capital increase will be executed, in full or in part, by the Board of Directors or the Executive Committee, which have express powers to sub-delegate to any of their members, whenever necessary to attend to Bond conversions, by the issuance of new ordinary shares with the same par value and the same rights as the ordinary shares outstanding on the date(s) on which the corresponding capital increase decision is executed. Whenever the Board of Directors, the Executive Committee or any member of the latter executes this Decision, as indicated above, the article of the Articles of Incorporation that refers to capital shall be amended accordingly.

The number of new shares to be issued upon exercise of the right to exchange or conversion shall be determined by dividing the nominal value of the corresponding Bond(s) by the Exchange Price in force on the date of the exchange in question, all in accordance with the Bonds' Terms and Conditions.

In accordance with the provisions of article 159.4 of the Consolidated Public Corporations Act, the shareholders of the Company shall not have pre-emptive subscription rights in the capital increases arising due to conversion of the Bonds into shares.

It is hereby decided to apply for the new shares to be listed on the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges and on Spain's Electronic Market (*Sistema de Interconexión Bursátil—Mercado Continuo*). The Board of Directors and the Executive Committee are empowered, with powers to sub-delegate to any of their members, so that any of them, without distinction, may make the corresponding requests, draft and present any appropriate documents in the terms that they consider appropriate and take such steps as may be necessary to that end.

**D. Reports and Terms and Conditions**

This decision is adopted on the basis of the text of the motion, which has been made available to shareholders as from the time of giving notice of the Meeting of Shareholders, and, for the purposes of articles 144, 292 and 293 of the Consolidated Public Corporations Act, on the basis of the Report by the Board of Directors and the mandatory report by an auditor designated by the Mercantile Register who is not the Company's auditor, which are attached as **Appendices II and III** to this proposal.

As far as the overriding of pre-emptive subscription rights is concerned, those reports were drafted having regard to article 293 of the Consolidated Public Corporations Act and Act 3/2009, of 3 April, on structural amendments, which came into force on 4 July 2009.

The Terms and Conditions of the Bonds to which the Issue refers have also been made available to the Company's shareholders.

**E. Delegation of powers**

Without prejudice to the specific delegations of powers contained in preceding sections, it is hereby resolved to empower the Board of Directors and the Executive Committee, as broadly as may be required by law and with the express power to sub-delegate to any of their members, so that any of them, without distinction, may execute this Decision, including in particular, but not limited to:

- (a) Increasing the Company's capital by issuing and placing in circulation, at one or several times, the shares representing capital that may be necessary to convert the Bonds, and to amend the Articles of Incorporation with regard to capital, annulling the part of that capital increase that is not necessary for the conversion into shares, and requesting the listing of the shares so issued on the Madrid, Barcelona, Valencia and Bilbao Stock Exchanges and on Spain's Electronic Market (*Sistema de Interconexión Bursátil—Mercado Continuo*).
- (b) Remedying, clarifying, interpreting, specifying and complementing the decisions adopted by the Meeting of Shareholders in such instruments or documents as may be granted in execution of those decisions and, in particular, any defects, omissions or errors of form or substance that might prevent the decisions and

their consequences from being registered in the Mercantile Register, the Official Register of the National Securities Market Commission (CNMV) or any others."

On the basis of the foregoing, the shareholders are asked to approve the proposal made by the Board of Directors.

**MOTION TWO:** Regarding item **Two** on the Agenda: ***To approve a buyback programme of shares of Fomento de Construcciones y Contratas, S.A. whose purpose is to enable the Company to fulfil the obligations derived from the issuance of exchangeable bonds and to reduce the Company's capital. To approve a reduction of the capital of Fomento de Construcciones y Contratas, S.A., through the amortisation of own shares for a par value equivalent to the number of new shares of the Company issued to attend to requests for exchange or conversion from holders of the Bonds.***

***Delegation of powers to the Board of Directors and the Executive Committee to execute these resolutions, including powers to sub-delegate.***

The Board of Directors submits for consideration by the Meeting of Shareholders the advisability of approving a share buyback programme under the provisions of article 3 *et seq.* of European Commission Regulation 2273/2003, of 22 December, in order to enable the Company to fulfil its obligations deriving from the issuance of bonds exchangeable for shares of the Company and to decrease the Company's capital so as to avoid the dilution that would arise for shareholders as a result of the issuance of new shares to convert the Bonds, once the Meeting of Shareholders approves the motion to make the convertible.

Consequently, in order to be able to fulfil the obligation to deliver shares arising out of the issuance of the Bonds and to avoid such dilution of shareholders, the Meeting of Shareholders is asked to approve a share buyback programme in accordance with and subject to that EU Regulation and a capital reduction by amortisation of the corresponding number of own shares of the Company acquired under the buyback programme or already held by the Company as treasury stock, by the same nominal amount as that by which the Company must increase capital to cater for requests to exchange the Bonds for newly-issued shares.

This proposal is made in the terms set out in the report drafted by the Directors in accordance with article 144 of the Consolidated Public Corporations Act, attached as Appendix II and made available to shareholders at the time of giving notice of the Meeting of Shareholders.

The capital reduction will be performed out of earnings or unrestricted reserves. In accordance with article 167.3 of the Consolidated Public Corporations Act, a reserve shall be appropriated for the nominal amount of the amortised shares and it may only be used subject to the same requirements as the capital reduction. Consequently, the Company's creditors shall not be entitled to object to the capital reduction so decided.

The Meeting of Shareholders is also asked to authorise and instruct the Board of Directors to execute that capital reduction decision, at one or several times, immediately after each execution of the decision adopted by the Company to increase capital so as to fulfil the obligations arising from requests to exchange or convert Bonds for newly-issued shares, and to appropriately amend article 5 of the Articles of Incorporation, which refers to capital.

On the basis of the foregoing, the full text of the motion laid before the Special Meeting of Shareholders of the Company under item two on the agenda is as follows:

***"To approve a buyback programme of shares of Fomento de Construcciones y Contratas, S.A. whose purpose is to enable the Company to fulfil the obligations derived***

***from the issuance of exchangeable bonds and to reduce the Company's capital. To approve a reduction of the capital of Fomento de Construcciones y Contratas, S.A., through the amortisation of own shares for a par value equivalent to the number of new shares of the Company issued to attend to requests for exchange or conversion from holders of the Bonds.***

***Delegation of powers to the Board of Directors and the Executive Committee to execute these resolutions, including powers to sub-delegate."***

In accordance with the Board of Directors report, which has been at the shareholders' disposal since notice was given of the Meeting of Shareholders:

**A. Share buyback programme**

Under the provisions of article 3 *et seq.* of European Commission Regulation 2273/2003, of 22 December, to approve a programme to buy back shares of the Company for the sole purpose of (i) fulfilling the obligations deriving from the issuance of exchangeable bonds for an amount of four hundred and fifty million euro (€450,000,000) approved by the Company under the decision by the Meeting of Shareholders on 18 June 2008 by virtue of an Executive Committee decision dated 6 October 2009, by delegation of the Board of Directors on 30 September 2009 (the "**Bonds**"), and (ii) reducing the Company's capital by amortising the shares acquired by virtue of the programme or those already held as treasury stock (including, for this purpose, the 5,090,000 shares loaned to the Joint Lead Managers), which shall henceforth be deemed to be subject to the terms and conditions of the programme approved by the Meeting of Shareholders.

As a result of the foregoing, decision six adopted by the Meeting of Shareholders on 10 June 2009 is annulled to the extent that it has not been executed and the Company is authorised so that, directly or via any of its subsidiaries, within a period of at most five years from the date of this Meeting of Shareholders, it may acquire, at any time and on as many occasions as it sees fit, shares of the Company by any means allowed by law, all in conformity with article 75 and matching articles of the Consolidated Public Corporations Act.

It is also decided to approve the limits or requirements of such acquisitions, as follows:

- The par value of the shares acquired, added to those already held by the Company and its subsidiaries, may not at any time exceed ten per cent of the Company's capital.
- The shares acquired must have been fully paid.
- The acquisition price may not be less than the par value nor more than 20 per cent higher than the market price.

The shares acquired under the buyback programme shall be used by the Company to fulfil its exchange or conversion obligations arising from the issuance of the Bonds and/or to reduce the Company's capital, as the case may be.

**B. Capital reduction**

To reduce capital by amortising the corresponding number of own shares of the Company that were acquired by virtue of the share buyback programme referred to in section A above or were already held by the Company as treasury stock (including, for this purpose, the 5,090,000 shares loaned to the Joint Lead Managers) by a nominal amount



equivalent to the number of new shares issued by the Company to cater for requests to exchange the Bonds.A

The capital reduction here approved shall be effected by amortising the corresponding number of own shares of the Company and shall be charged against voluntary reserves; a reserve for amortised capital shall be appropriated for the par value of the amortised shares, which may only be used subject to the same requirements as for a capital reduction, by application of article 167.3 of the Consolidated Public Corporations Act. Consequently, in accordance with the provisions of that article, the Company's creditors shall not have the right of opposition provided by article 166 of the Consolidated Public Corporations Act as a result of the capital reduction that is approved.

Therefore, the purpose of the reduction shall be to amortise own shares.

The capital reduction here decided shall be performed at one or several times during the term of the Company's share buyback programme, immediately after each execution of the decision adopted by the Company to increase capital so as to fulfil the obligations arising from requests to exchange or convert Bonds for newly-issued shares.

**C. Delegation to the Board of Directors and the Executive Committee**

To delegate to the Board of Directors and the Executive Committee, without distinction and with powers as broad as may be required by law, the power to execute the foregoing capital reduction decision, which must be executed at one or several times during the term of the Company's share buyback programme, immediately after each execution of the decision adopted by the Company to increase capital so as to fulfil the obligations arising from requests to exchange or convert Bonds for newly-issued shares, performing such proceedings, processes and authorisations as may be necessary or required by the Consolidated Public Corporations Act and other applicable legislation and, in particular, they are empowered so that, within the period and limits stated for such execution, they may establish the date(s) of the specific capital reduction(s) on the occasion of the conversion of the Bonds, to state the amount of the reduction, making it coincide with the nominal amount by which the Company increases capital as a result of the issuance of new shares to cater for requests to exchange the Bonds at any given time, and to amend Article 5 of the Articles of Incorporation to the new amount of capital; to request delisting of the amortised shares and, generally, to adopt such decisions as may be necessary for the purposes of such amortisation and the consequent capital reduction, designating the persons to participate in formalising them."

**MOTION THREE:** Regarding item **Three** on the Agenda: ***To authorise the Board of Directors and the Executive Committee to interpret, remedy, complement, execute, register, delegate powers and adapt the decisions adopted by the Meeting of Shareholders, with express powers to sub-delegate.***

The Meeting of Shareholders is asked to approve the following motion:

***"To authorise the Board of Directors and the Executive Committee to interpret, remedy, complement, execute, register, delegate powers and adapt the decisions adopted by the Meeting of Shareholders, with express powers to sub-delegate.***

Without prejudice to the authorisations granted by the Meeting of Shareholders in the preceding decisions, it delegates in the Board of Directors and the Executive Committee, with express powers to sub-delegate to any director, powers as broad as may be required by law to establish,

complete, elaborate upon and even amend the decisions adopted by the Meeting of Shareholders, to perform such proceedings as may be necessary before any public or private body or entity and to fulfil such requirements as may be required by law for their execution, with the power to complete and remedy omissions and defects in all the decisions adopted by the Meeting of Shareholders, to grant such public or private documents as they may consider necessary or advisable, also for the adaptation of the adopted decisions in view of the verbal or written feedback from the Mercantile Register and from any competent authority, functionary or institution, and to perform such actions as may be necessary or advisable to fulfil them and, in particular, to register with the Mercantile Register those which can be so registered.

The Board of Directors and the Executive Committee are empowered to delegate, to any of the Company's directors, any or all of the powers received from this Meeting of Shareholders by virtue of the preceding decisions and of this decision."

## DIRECTORS' REPORT

Report by the Directors of Fomento de Construcciones y Contratas, S.A. in connection with the proposal to be submitted for approval at the Special Meeting of Shareholders in regard to the convertibility of exchangeable bonds, overriding of shareholders' pre-emptive subscription right, capital increase, share buyback programme and capital reduction through amortisation of treasury stock.

For the purposes of the provisions of articles 292.2, 293.2 b) and 144.1 a) of the Public Corporations Act, the Directors of Fomento de Construcciones y Contratas S.A. unanimously authorised this report in Madrid on 27 October 2009.

## 1 PURPOSE OF THE REPORT

At the meeting of the Board of Directors of the Company held today and at which this report is approved, it was decided to call a Special Meeting of Shareholders of Fomento de Construcciones y Contratas, S.A. ("**FCC**" or the "**Company**") including the following proposals among the points of the Agenda to be submitted for consideration:

- (i) To approve the convertibility of the Company's bonds that are exchangeable for shares, issued for an amount of four hundred and fifty million euro (€450,000,000) under the decision by the Meeting of Shareholders on 18 June 2008 and by virtue of an Executive Committee decision dated 6 October 2009, by delegation of the Board of Directors on 30 September 2009 (the "**Bonds**"), to enable the Company to cater for exchange requests from bondholders by delivering newly-issued shares. To totally override the shareholders' pre-emptive subscription right. To increase capital by the amount required to attend to the conversion of the bonds up to an initially envisaged maximum of twelve million euro, subject to amendments on the basis of the terms and conditions of the Bonds. To delegate powers to the Board of Directors and the Executive Committee to execute these resolutions, including powers to sub-delegate.
- (ii) To approve a buyback programme of shares of the Company whose purpose is to enable the Company to fulfil the obligations derived from the issuance of the Bonds and to reduce the Company's capital. To approve a reduction of the Company's capital through the amortisation of own shares for a par value equivalent to the number of new shares of the Company issued to attend to requests for exchange or conversion from holders of the Bonds. To delegate powers to the Board of Directors and the Executive Committee to execute these resolutions, including powers to sub-delegate.

In order for that proposal to be submitted for approval at the Special Meeting of Shareholders, the Company's Board of Directors is required to draft a written report in accordance with the provisions of articles 292.2, 293.2 b) and 144.1 a) of the Public Corporations Act (*Ley de Sociedades Anónimas*), in order to set out the conditions and forms of the conversion and the reasons for the proposals to override pre-emptive subscription rights, to reduce capital and to amend the Articles of Incorporation (the "**Report**").

## 2 CONVERTIBILITY OF THE BONDS AND CONDITIONS AND FORMS OF CONVERSION

### 2.1 Context of the transaction

On 30 September 2009, the Company's Board of Directors, making use of the power vested in it by virtue of decision ten of the Ordinary Meeting of Shareholders held on 18 June 2008, decided to empower the Executive Committee, with express powers to sub-delegate in the Managing Director, to issue bonds exchangeable for shares of the Company, the fundamental terms of which were provided in the minutes of the meeting; the Executive Committee or, in the event, the Managing Director, undertaking to establish the final terms and conditions of the issue, and being able to complete, rectify and even modify the terms initially envisaged by the Board of Directors.

Under the powers granted by the Board of Directors, the Executive Committee decided on 6 October 2009 to perform an issue (the "**Issue**") of bonds exchangeable for shares of the

Company (the "**Bonds**") for a maximum amount of five hundred million euro (€500,000,000), which can be expanded to five hundred and fifty million euro (€550,000,000), with the possibility of incomplete subscription, maturing in five (5) years, and established the terms and conditions of the exchange, although some of the terms and conditions of the Issue will be determined once the bookbuilding to be conducted by the Joint Lead Managers (defined below) is completed.

On 7 October 2009, the Managing Director, making use of the powers granted by the Board of Directors and the Executive Committee, set some of the terms and conditions of the Issue that had not been established by the Executive Committee and signed a Bond Subscription Agreement under English law (the "**Subscription Agreement**") under which Barclays Bank PLC and Société Générale undertake, as joint lead managers (the "**Joint Lead Managers**") to underwrite the issue (the "**Issue**"). Additionally, by virtue of the Subscription Agreement, the Company granted the Joint Lead Managers a green shoe option to ask the Company to increase the amount of the Issue by up to fifty million euro (€50,000,000) in order to cater for additional applications for the Bonds from investors following signature of the Subscription Agreement.

On 22 October 2009, the Chairman and the Managing Director granted an instrument to protocolise and notarise the decisions by the Company's organs in which they established the final Terms and Conditions of the Issue (the "**Terms and Conditions**") in English and Spanish (the latter for information purposes), establishing among other matters that the amount of the Issue is four hundred and fifty million euro (€450,000,000) and can be increased to five hundred million euro (€500,000,000) if the Joint Lead Managers exercise the green shoe option.

On 23 October 2009, the notarial instrument referring to the Issue was granted, stating that the amount of the issue is four hundred and fifty million euro (€450,000,000) since the Joint Lead Managers did not exercise the aforementioned green shoe option by the established deadline.

The Company's ability to meet its obligations under the Bonds via the delivery of existing shares to bondholders will be strengthened, in the event of approval at the Meeting of Shareholders, through a share buyback programme, referred to in the second item on the Meeting's agenda as referred to in section 5.(c) of this Report.

The Issue will be managed by Barclays Bank PLC and Société Générale and will address eligible international institutional investors.

It is hereby placed on record that, pursuant to article 111 bis of the Securities Market Act, the limit on the issuance of bonds established in article 282 of the Public Corporations Act does not apply in this case, since the Company is a listed corporation. However, the Ordinary Meeting of Shareholders of 18 June 2008 established, in decision ten, that the maximum total amount of the issue(s) of securities exchangeable for shares of the Company that the Board of Directors, or, in the event of delegation of powers, the Executive Committee or the Managing Director may decide pursuant to the delegation contained in the aforementioned decision eight of that Ordinary Meeting of Shareholders would be six hundred million euro (€600,000,000). The Board of Directors hereby places on record that between the date of that Ordinary Meeting and the date of this Report, the Company has not issued any securities exchangeable for shares of the Company. As a result, the amount of the Issue, four hundred and fifty million euro (€450,000,000), does not exceed the maximum limit of six hundred million euro (€600,000,000) set by the

Ordinary Meeting of Shareholders on 18 June 2008. Furthermore, the Ordinary Meeting of Shareholders established a limit on the share price for the purposes of exchange when the issue is performed at a fixed exchange ratio. Specifically, it established “*the price of the shares for the purposes of exchange may not be lower than the higher of (i) the arithmetic mean of the closing prices of shares of the Company in the Electronic Market during the period to be determined by the Board of Directors, which not be longer than three months or shorter than fifteen days prior to the date of the meeting of the Board of Directors which, making use of these powers, approves the issue of the exchangeable securities, and (ii) the closing price of the shares in the same Electronic Market on the day prior to the meeting of the Board of Directors, which, making use of these powers, approves the issue of the exchangeable securities*”. In this connection, the limit established by the Ordinary Meeting of Shareholders is understood to be complied with since the exchange price (€39.287) approved by the Managing Director is higher than both prices, as (i) €30.38 is the arithmetic average of the closing prices during the fifteen days prior to the date on which the Executive Committee approved the issue, and (ii) €31.60 is the closing price of the shares the day before the date on which the Executive Committee approved the Issue.

The Issue has been performed in accordance with the terms and conditions attached hereto as **Appendix I** (in English and Spanish, the latter for information purposes) and summarised in section 2.3 below (“**Terms and Conditions**”).

Subscription and disbursement of the Bonds, once the conditions stipulated in the aforementioned Subscription Agreement have been complied with, including finalisation of the procedures for listing of the Bonds in the multilateral trading platform EuroMTF Luxembourg, is scheduled to take place no later than 30 October 2009 (“**Completion Date**”).

The Subscription Agreement, Terms and Conditions and the manner of representing the Bonds shall be governed and interpreted in accordance with English law, since it is the standard legislation applicable to this kind of instrument, taking into account the kind of eligible investor and market to which the Issue is addressed. The capacity of the Issuer, the relevant shareholder agreements, the conditions relating to precedence of the Bonds, the appointment of the Commissioner and the constitution of the Bondholders' Syndicate shall be governed by Spanish law.

The Board of Directors hereby states that funds derived from the subscription of the Bonds, once the issuance expenses and fees have been paid, will be used to meet the Company's general financing needs, strengthening the capital structure and balance sheet.

## **2.2 Possibility of converting the Bonds into newly-issued shares of the Company**

As established in Clause 6 of the Terms and Conditions, if the motion proposed to the Special Meeting of Shareholders is approved and registered in the Mercantile Register, the Issuer will have the option to meet its obligations deriving from the exercise by Bondholders of their right to exchange Bonds by delivering newly-issued shares of the Company. Accordingly, the Bonds issued as exchangeable for existing shares of the Company would also become convertible into newly-issued shares.

The conditions and forms for the conversion of Bonds into new shares of the Company shall be those provided in the Terms and Conditions of the Issue, which are summarised in section 2.3 below. In particular, approval by the Meeting of Shareholders and registration in the Mercantile Register of the decision to render the Bonds convertible into new shares of

the Company will affect the provisions of Clause 6 of the Terms and Conditions, which is summarised in point (vii) of section 2.3.

The Board of Directors considers that the possibility of converting the Bonds into newly-issued shares of the Company will strengthen the Company's balance sheet and equity and will afford the Company flexibility when it comes to catering for requests to exchange or convert Bonds, as described in section 3.1 b) below. Furthermore, it believes that this operation will help achieve diversification of the funding base, by tapping into the bond market as a supplementary source of financing to purely bank funding. Moreover, to avoid excessive dilution of the shareholders, the Board proposed to the Meeting of Shareholders a capital reduction in the terms provided in section 5 below.

### **2.3 Conversion terms and conditions**

The terms and conditions of the exchange or conversion of the Bonds for existing or new shares of the Company are those provided in the Terms and Conditions. Those conditions and forms, which meet the requirements of the Company's Articles of Incorporation, are broadly as follows:

- (i) Issuer. In compliance with the provisions of article 285.1.a) of the Consolidated Public Corporations Act, the particulars of the Issuer are set out below:
  - The Issuer is FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A., with registered offices in Barcelona, calle Balmes, No. 36, 08007, registered in the Barcelona Mercantile Register under number 663/04, tome 36005, folio 22, sheet B-26947, entry 2765, with tax ID A-28037224. FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A. is a corporation whose shares are listed in the stock exchanges of Madrid, Barcelona, Valencia and Bilbao and included in Spain's Electronic Market (the "**Issuer**"). Deloitte, S.L. is the auditor appointed by the Company and registered in the Madrid Mercantile Register on sheet M-54414, tome 3190, folio 1 and with tax ID B-79104469.
  - Its corporate purpose is as follows:
    - Constructing, executing and maintaining public and private structures and operating all types of infrastructures.
    - Providing sanitation, cleaning, management, maintenance and repair services for public and private buildings, structures, ships, aircraft and in general all kinds of public or private installations. Providing all kinds of services on behalf of public administrations, which may include collaborating on the tasks inherent to the collection management of government agencies, provided that it does not involve exercising authority or guarding public funds.
    - Designing, researching, developing, building, operating, maintaining and commercialising wastewater treatment and purification plants. Supplying, transforming and commercialising all kinds of water.
    - Waste management and pollution control and any advisory, research or consulting activity related thereto. Designing, researching, developing, operating, maintaining and commercialising recycling plants and installations and waste recovery, elimination and storage

facilities or transfer stations for waste and contaminated soil, and purchasing and selling the by-products obtained from such treatments and all types of waste.

- Establishing and operating cement, lime, plaster and prefab factories and concrete factories and creating and operating other industries related to these products. Investigating and mining mineral deposits; acquiring, using, enjoying permits, concessions and other mining rights and interests; industrialising and commercialising the mining products derived from such rights.
- Promoting and selling plots, land, residential complexes, housing developments, commercial and office space and in general any kind of real estate. Operating such properties under leases or any other arrangement not involving the transmission of ownership and providing consulting, administration and management services for third party property owners.
- Studying, designing, acquiring, assigning, disposing of, building, promoting, advising, administering, managing, and operating shopping centres under leasing agreements or other arrangements.
- Designing, building, quality assurance, buying, selling, supplying, importing, exporting, leasing, maintaining, repairing distributing, representing and operating, including advertising, machinery and components; tools; vehicles; installations; materials and equipment; furniture and urban equipment in the broadest sense of the term, as well as signalling elements in cities and towns and on intercity roadways.
- Creating, designing, buying, selling, operating and assigning patents, models, trademarks, licenses and other types of industrial or intellectual property.
- Studying, planning, buying, assigning, disposing of, developing, advising, administering, managing and operating geriatric residences.
- Studying, planning, buying, assigning, disposing of, developing, administering, managing and operating business related to the food sector.
- Providing technical engineering services, including projects, studies and reports, as well as pre-investment studies, quality control, internal audits and electronic data operation.
- Designing, manufacturing, installing, assembling, buying, selling, supplying, importing, exporting, leasing, maintaining, distributing, representing and operating electrical, computer, electronic, and telecommunications services and designing, researching, development and commercialising products related to such services.



- Studying, planning, buying, assigning, disposing of, developing, administering, managing and operating business related to the energy sector.
- Studying, planning, buying, assigning, disposing of, developing, advising, administering, managing and operating passenger and merchandise transport services, including medical transport services in specially-equipped vehicles, all kinds of bus and train stations, airports and ports and providing all kinds of services to transportation companies. Managing, operating and maintaining all kinds of parking areas and providing vehicle removal and towing services.
- Studying, planning, buying, assigning, disposing of, developing, administering, managing and operating businesses related to logistics sector.
- Studying, planning, buying, assigning, disposing of, developing, administering, managing and operating business related to the tourism and entertainment industry.
- Studying, planning, buying, assigning, disposing of, developing, advising, administering, managing and operating cemeteries and morgues.
- Studying, planning, buying, assigning, disposing of, developing, administering, managing and operating businesses related to the financial services sector.
- Participating in other companies or concerns, domestic or foreign, by subscribing, acquiring, negotiating and possessing shares, participations and other titles, whether fixed or variable income. Under no circumstances shall the company participate in the activities reserved from collective investment institutions and companies regulated by Law 35/2003 of 4 November on collective investment institutions.

The Company may participate in the activities mentioned above, both in Spain and abroad, either directly or indirectly through interests in other domestic or foreign companies with analogous or identical business objectives. Such interests may include subscribing, purchasing or acquiring, by any legally acceptable means, mercantile bonds or securities entitling the owner to participate in the share capital or the profits of such companies, as well as other business association arrangements.

Those activities for which the law establishes special requirements with which the Company does not comply are excluded.

- Its share capital totals one hundred and twenty-seven million three hundred and three thousand two hundred and ninety-six euro (€127.303.296,00), divided and represented by one hundred and twenty-seven million three hundred and three thousand two hundred and ninety-six (127,303,296) shares, each with a par value of one euro, which are fully subscribed and paid up.

- The amount of reserves recorded in the last approved balance sheet is eight hundred and eighty-six million nine hundred and fifty thousand euro (€886,950,000).
- (ii) Amount, face value and type of issue: The issue amount totals four hundred and fifty million euro (€450,000,000), and it is possible to declare subscription to be incomplete.
- The Bonds will be issued at par with a face value of fifty thousand euro (€50,000).
- (iii) Representation: The Bonds will constitute a single series and will be represented by registered certificates, initially in the form of a single global certificate (the "Global Certificate") but may be subsequently represented by definitive registered bonds ("Definitive Registered Bonds").
- (iv) Coupon: The Bonds accrue interest from their issuance at an annual rate of 6.50 per cent, calculated based on their face value and payable semi-annually in arrears, in equal instalments on 30 April and 30 October each year, beginning on 30 April 2010.
- The calculation of interest, the period of accruing interest and the method of payment are set out in Clauses 5 and 8 of the Terms and Conditions.
- (v) Subscription and disbursement:
- Subscription period. As provided in the Subscription Agreement, the subscription of Bonds by eligible investors will take place once the conditions stipulated for this purposes in the Subscription Agreement have been met, the required announcement has been published in the Official Gazette of the Mercantile Register and the issue instrument has been registered, which is scheduled to take place no later than the Completion Date.
- Disbursement. The Bonds will be paid for by subscribers in cash on delivery, in accordance with the provisions of the Subscription Agreement.
- (vi) Ordinary amortisation: The Bonds will have a duration of five (5) years and will therefore mature five years after the Completion Date, namely 30 October 2014 ("**Final Maturity Date**"). On the Final Maturity Date, those Bonds that have not been acquired or cancelled, amortised or exchanged will be amortised for their principal on the Final Maturity Date, subject to the provisions of section (x) below.
- (vii) Exchange or conversion of the bonds into shares of the Company: The Bonds will be voluntarily exchangeable for existing shares or convertible into new shares of the Company (at the Company's election) when the bondholder exercises the right of exchange or conversion, having regard to the provisions of Clause 6 of the Terms and Conditions, where, among other aspects, the period and price of exchange or conversion are established. The exchange or conversion price, of €39.287 per share is subject to the adjustments provided in the aforementioned Clause 6 of the Terms and Conditions.
- (viii) Guarantees. The Issue is backed by the Company's full faith and credit and does not have any special guarantee from third parties.
- (ix) Listing. Listing of the Bonds will be requested in the multilateral trading platform EuroMTF Luxembourg.

- (x) Precedence. The Bonds will be subordinated to certain debt claims in the terms provided in Clause 1 of the Terms and Conditions. Without prejudice to the above, the Bonds shall rank *pari passu* with the other unsecured debt, present and future, of the Company, except in the case of protection from creditors with respect to that debt which might have preference in accordance with imperative and generally applicable laws.
- (xi) Bondholders' Syndicate and Commissioner: A Bondholders' Syndicate has been constituted, under the name "*Sindicato de Bonistas de la Emisión de Bonos Canjeables de Fomento de Construcciones y Contratas, S.A. 2009*", which will act in accordance with its regulations and the Consolidated Public Corporations Act. BNY Corporate Trustee Services Limited has been appointed provisional Commissioner. The regulations of the Bondholders' Syndicate are attached as **Appendix II** of this Report

In the event that the Special Meeting of Shareholders does not approve the convertibility of the Bonds proposed to enable the Company to cater for the exchange requests from investors by delivering new shares, the Bond Issue shall remain in force and fully valid in accordance with the terms agreed by the Executive Committee on 6 October 2009 and by the Managing Director, by virtue of the powers conferred by the Board of Directors on 30 September 2009 and by the Executive Committee, respectively.

### **3 REASONS FOR OVERRIDING SHAREHOLDERS' PRE-EMPTIVE SUBSCRIPTION RIGHT**

The Board of Directors proposes, within the framework of the transaction described here, to override the pre-emptive subscription right corresponding to the Company's shareholders. Since only the Meeting of Shareholders can make the decision to override that right, the request to override is made by the Board of Directors in accordance with the provisions of article 293.2 b) of the Public Corporations Act, as amended by Act 3/2009, dated 3 April, concerning structural changes in mercantile companies. In order to comply with the provisions of the aforementioned article and, ultimately, to evidence compliance with the legal requirements for approving the Bond convertibility agreement and consequent capital increase in the maximum amount necessary to cater for the conversion of the Bonds, the Board of Directors of FCC hereby states:

#### **3.1 Advantages of overriding shareholders' pre-emptive subscription right**

The Board of Directors considers that the structure of the operation as proposed (including the proposal to approve the reduction of share capital in the terms described in section 5 below, with a view to avoiding dilution of shareholders in the event that new shares of the Company are issued to meet the exchange requests from bondholders) is suitable in order to achieve the desired purpose and in keeping with the necessary proportionality between the goal pursued and the method chosen. To accredit in more detail the appropriateness of the proposed transaction, the advantages of the proposed structure are set out below:

- (a) Eligible investors. By addressing the Issue to eligible international investors, the Company will have the opportunity to attract a substantial volume of financial resources from a limited number of investors who are active in international financial markets, tapping the huge trading volume of those markets.

Furthermore, the investors to whom the exchangeable bonds issue is addressed differ from those who operate in the bank financing market and equity markets,

both of which are well known to the Company since it has already used those markets to raise funds with which to finance its activity and execute its business plan. Consequently, this is an opportunity to broach a new source of financing for the Company by addressing investors who operate in the market of instruments convertible into shares of listed companies which, in exchange for a lower remuneration on their debt instruments, are offered the opportunity, in the event, of acquiring an interest in the Company's capital.

- (b) Flexibility in compliance with the Terms and Conditions. The overriding of the shareholders' pre-emptive subscription rights, which is necessary in order for the Bonds subscribed by eligible international investors that are not shareholders of FCC to be convertible into new shares of the Company, will afford the Company an additional mechanism to the pre-existing one of delivering pre-existing shares, in order to be able to cater, in compliance with the Terms and Conditions, for the exchange or conversion requests from holders of the Bonds via the issuance of new shares.
- (c) Speed of execution. Less exposure to market volatility. Furthermore, the transaction structure enables the Bonds to be placed with investors by the Joint Lead Managers in a very brief period, taking advantage of the international market situation (the "market window"), thereby avoiding exposure to market volatility. Although the investors with whom the Bonds have been placed knew that the Bonds were not convertible at the time of issue, they have been notified and are interested in the approval of the convertibility of the Bonds by the Meeting of Shareholders.

Any strategy other than the one here proposed could delay the process of raising funds. As evidence of this, suffice it to note that in the case of an issue of convertible bonds without overriding of shareholders' pre-emptive subscription right, shareholders must be given a period of no less than fifteen days from publication of the issue announcement in the Official Gazette of the Mercantile Register in order to exercise those rights.

- (d) Cost savings. Overriding the pre-emptive subscription right reduces the coupon of the issue and the debt, improving the interest and conversion ratios.

In this connection, it can be asserted that, in general, the coupon of convertible and/or exchangeable bonds is lower than the cost of bank debt and non-convertible subordinated debt, since the value of the conversion option held by investors is reflected in the coupon of a convertible security. In particular and in the case of this Issue, the fixed coupon of 6.50% is lower than the rate at which the Company would have access to subordinated debt markets at this time for operations with similar characteristics.

- (e) Lower arrangement costs. Any issue of convertible bonds by a listed company which does not override the pre-emptive subscription right requires the registration of an Offering Prospectus (comprising the Registration Document, Securities Note and Summary) with the National Securities Market (Comisión Nacional del Mercado de Valores - CNMV), since the warrants must be traded in the Spanish securities markets in which the issuing company is listed. In the case of the Company, since there is no Registration Document filed with the CNMV, it would have to draft and register a complete Prospectus, and would not be able to register

only a Securities Note to complement a pre-existing Registration Document, thus delaying the entire process of launching the operation and incurring additional expenses for external advisors.

The proposed Issue structure, which envisages the listing of the Bonds issued in an organised but non-regulated market without a public offering, means that the Company does not have to file a Prospectus of any sort with the CNMV either to issue the exchangeable bond or to make it convertible, nor for the issuance of the shares or to list them.

### **3.2 Setting the conversion price**

The price of converting the Bonds into newly-issued shares is the one set out in the Terms and Conditions for the exchange of the Bonds for existing shares of the Company. The Board of Directors places on record that the price of converting the Bonds (€39.287) was determined taking into account:

- (a) the market price of the Company's shares, based on the volume-weighted average share price in the Spanish securities markets during the market session on 7 October; and
- (b) a 28% conversion premium, based on the process of bookbuilding performed by the Joint Lead Managers in the market which, by receiving, classifying and analysing investment proposals, enabled the price to match market expectations. This technique, which is standard in this kind of operation, is ideal to minimise the cost of fundraising, optimise the financial conditions of the Issue and generally increase the Issue's chances of succeeding.

The Board of Directors emphasises that the price of converting the Bonds into shares and, therefore, the issue price of the shares (face value and issue premium) is at all events significantly higher than the net asset value of the Company's shares according to the Company's consolidated financial statements at 31 December 2008, approved at the Ordinary Meeting of Shareholders on 10 June 2009, which was €25.107 per share. Attached to this Report as **Appendix III** is a literal copy of the auditor's report on the Company's consolidated financial statements at 31 December 2008.

Due to the benefits for the Company of the proposed structure of the operation and the established conversion price, the Board of Directors reports that the structure of the operation is not only suitable to achieve the desired aim, but it is also in the Company's best interests. Furthermore, and without prejudice to the advantages for the Company of overriding the pre-emptive subscription right to prevent any impairment of shareholders whose expectations might be undermined by the dilution which this issue of convertible bonds with no pre-emptive right might entail (depending on how the share performs), the Board of Directors submits for the consideration of the Company's Meeting of Shareholders a proposal to reduce share capital by amortisation of own shares as described in section 5 below.

The accuracy of the statements contained in sections 2 and 3 above is corroborated by the special report from an auditor other than the Company's auditor in accordance with the provisions of articles 292 of the Public Corporations Act, relating to the terms and conditions of conversion, and 293 of the Public Corporations Act, relating to the technical judgement on the reasonableness of the data contained in this Directors' Report and concerning the appropriateness of the conversion ratio.

#### **4 JUSTIFICATION OF THE PROPOSAL TO INCREASE CAPITAL AND EMPOWERMENT OF BOARD OF DIRECTORS AND EXECUTIVE COMMITTEE, INCLUDING POWER TO SUB-DELEGATE IN ANY OF THEIR MEMBERS, TO EXECUTE THE CAPITAL INCREASE**

The Board of Directors reports that, in order to afford the Company the necessary flexibility and capacity to cater for the exchange or conversion requests from holders of the Bonds, and for the reasons given in this Report, in the event of approval of the convertibility proposal discussed in section 2 herein, it proposes that the Meeting of Shareholders approve an increase in the Company's share capital in the amount necessary to cater for the exchange or conversion requests from holders of the Bonds via the issuance of new shares of the Company to a maximum amount initially set at twelve million euro (€12,000,000), subject to changes in line with the provisions of the Terms and Conditions.<sup>2</sup>

Furthermore, the Board of Directors proposes that the Special Meeting of Shareholders empower the Board of Directors (pursuant to the provisions of article 153.1.a) of the Public Corporations Act) and the Executive Committee, with express powers to sub-delegate in any of their members, to execute, whenever the Company decides to attend the exchange or conversion requests from bondholders via the issuance of new shares of the Company, and in the manner and method which they consider advisable, the decision to increase capital and to decide the date(s) on which to increase capital, which at all events will be subsequent to the approval of the capital increase at the Special Meeting of Shareholders. Furthermore, it is proposed that the Board of Directors and the Executive Committee be empowered, with express powers to sub-delegate in any of their members, to decide the conditions of the capital increase in all aspects not envisaged by the Meeting of Shareholders, with the limit of the number of shares it is necessary to issue to cater for the exchange or conversion requests from holders of the Bonds at any given time by issuing new shares.

In congruence with this, it is proposed that the Board of Directors and Executive Committee be empowered, , with express powers to sub-delegate in any of their members, to amend the wording of article 5 of the Company's Articles of Incorporation to adapt it to the amount of share capital resulting from each of the capital increases.

#### **5 JUSTIFICATION OF THE PROPOSAL TO REDUCE SHARE CAPITAL VIA AMORTISATION OF OWN SHARES IN ORDER TO PREVENT POSSIBLE DILUTION OF SHAREHOLDERS DERIVING FROM THE CONVERTIBILITY OF THE BONDS INTO NEWLY-ISSUED SHARES. DELEGATION OF POWERS OF EXECUTION TO THE BOARD OF DIRECTORS AND EXECUTIVE COMMITTEE, WITH POWERS TO SUB-DELEGATE IN ANY OF THEIR MEMBERS**

Approval by the Meeting of Shareholders of the convertibility of the Bonds and overriding of shareholders' pre-emptive subscription right pursuant to article 293 of the Public Corporations Act could undermine the expectations of shareholders of the Company because of the dilution deriving (depending on share performance) from any issuance of convertible bonds without such rights.

The Board of Directors has taken into consideration the advantages for the Company of approval by the Meeting of Shareholders of the convertibility of the Bonds. Furthermore, it has assessed the risk that convertibility might not be approved by the Meeting of Shareholders as a result of shareholders' refusal to expose themselves to possible dilution

of their shareholdings in the Company if, when the time comes, the exchange or conversion requests from Bondholders are covered using newly-issued shares.

In order to make the proposal more attractive to shareholders of the Company, the Board of Directors has decided to also submit for consideration at the Special Meeting of Shareholders a plan to reduce share capital by amortising the corresponding number of own shares acquired under the share buyback programme referred to in section (c) below, or already held by the Company as treasury stock (including, for this purpose, the 5,090,000 shares loaned to the Joint Lead Managers), by a face value equivalent to the number of new shares issued by the Company in order to cater for the Bond exchange requests.

In order to provide more detailed evidence of the suitability of the proposed capital reduction, the Board of Directors expressly notes the following:

- (a) Removal of the dilutive effect of the convertibility of the Bonds for shareholders. If the General shareholders' Meeting approves the capital reduction proposed, it will prevent possible dilution for shareholders deriving from the issue of new shares to cater for requests from holders of the Bonds to exchange or convert Bonds.
- (b) Automatic system. The proposed capital reduction decision in the foregoing terms includes the delegation of powers of execution to the Board of Directors and the Executive Committee, with express powers to sub-delegate in any of their members, similar to the delegation of powers agreed with regard to the capital increase to cater for the conversion of Bonds into newly-issued shares of the Company. Furthermore, the capital reduction will be charged against income or unrestricted reserves. In accordance with article 167.3 of the Consolidated Public Corporations Act, a reserve shall be appropriated for the nominal amount of the amortised shares and it may only be used subject to the same requirements as the capital reduction. Consequently, the Company's creditors shall not be entitled to object to the capital reduction so decided.

Consequently, the existence of the delegation of powers and the absence of a need to wait for the period established by law for creditors to object in the event of a capital reduction will render the system used to execute the agreements to increase and reduce capital completely automatic, enabling the same person or corporate body executing, at one or more times, the capital increase resolution, to also execute the capital reduction simultaneously or immediately afterwards.

- (c) The Company's share buyback programme. In order to facilitate not only the availability of the number of Company shares necessary to comply with the obligation to deliver existing shares to cater for bondholders' requests to exchange or convert Bonds (if the Company opts for this alternative), but also of the number of own shares necessary to perform the capital reduction through amortisation of own shares to prevent shareholder dilution, the Board of Directors deemed it advisable to structure the acquisitions of own shares which must be performed in the future via a share buyback programme pursuant to the provisions of article 3 et seq. of European Commission Regulation 2273/2003, of 22 December (the "**Programme**"), thereby annulling the unexecuted part of decision six approved at the Meeting of Shareholders on 10 June 2009 regarding the acquisition of own shares.

The programme will enable the Company to reduce capital through amortisation of own shares acquired in the future in order to perform that amortisation, avoiding the need to make a tender offer in accordance with the exemption provided in article 12.2 of Royal Decree 1066/2007, dated 27 July, concerning the rules for tender offers for securities, in relation to share buyback programmes provided in European Commission Regulation 2273/2003.

## **6 FULL TEXT OF THE MOTIONS TO WHICH THIS REPORT REFERS**

The full text of the motions to be submitted for approval at the Special Meeting of Shareholders to be held on 30 November 2009, at first call, and on 1 December 2009, at second call, is as follows:

- 1. *To approve the convertibility of the Company's bonds that are exchangeable for shares, issued for an amount of four hundred and fifty million euro under the decision by the Meeting of Shareholders on 18 June 2008 by virtue of an Executive Committee decision dated 6 October 2009, by delegation of the Board of Directors on 30 September 2009, to enable the Company to cater for exchange requests from bondholders by delivering newly-issued shares.***

***To totally override the shareholders' pre-emptive subscription right. To increase capital by the amount required to attend to the conversion of the bonds up to an initially envisaged maximum of twelve million euro, subject to amendments on the basis of the terms and conditions of the bonds.***

***Delegation of powers to the Board of Directors and the Executive Committee to execute these resolutions, including powers to sub-delegate.***

### **A. Approve the convertibility of the Bonds**

To authorise that the Company's bonds that are exchangeable for shares (the "Bonds"), issued for an amount of four hundred and fifty million euro (€450,000,000) under the decision by the Ordinary Meeting of Shareholders on 18 June 2008 by virtue of an Executive Committee decision dated 6 October 2009, by delegation of the Board of Directors on 30 September 2009, to be converted into shares of the Company to enable the Company to cater for exchange requests from bondholders by delivering newly-issued shares in accordance with the Terms and Conditions of the issue. Accordingly, once this decision has been duly registered with the Mercantile Register, the condition established in the Terms and Conditions of the Bonds in order for the Issue to be able to fulfil its obligations by delivering newly-issued shares of the Company shall be deemed to have been fulfilled.

The conditions and forms of conversion shall be those established for the exchange in the Bonds' Terms and Conditions approved by the Executive Committee on 6 October 2009 and completed by the Company's Managing Director on 22 October 2009 under the powers delegated to him by the Executive Committee.

### **B. To totally override the pre-emptive subscription right.**

To override the pre-emptive subscription right as required by the decision to render the Bonds convertible into newly-issued shares of the Company, which would



otherwise correspond to the Company's shareholders with respect to the Bonds in accordance with article 293 of the Consolidated Public Corporations Act.

The suppression of the pre-emptive subscriptions rights held by the Company's shareholders is duly justified because it is in the Company's interests and because of the reasons set out by the Directors in their report, which has been made available to the shareholders as from the time notice was given of the Meeting of Shareholders. That the content of the Directors' Report is correct is ratified by a report issued by an auditor appointed by the Mercantile Register who is not the company's auditor, which has also been made available to the shareholders as from the time notice was given of the Meeting of Shareholders.

Without prejudice to the foregoing, as provided in the Directors' Report, the Board of Directors of the Executive Committee will, when the time comes, adopt the appropriate measures to avoid the dilutive effect that the issuance of the new shares will have for the shareholders, by making use of the powers delegated by this Meeting of Shareholders.

**C. To approve the increase in capital needed to cater for conversion of the Bonds**

In accordance with the provisions of article 292 of the Consolidated Public Corporations Act, approve an increase in the Company's capital stock by the amount required to attend to requests from the holders of the Bonds to convert them under the Terms and Conditions up to an initially envisaged maximum of thirteen million euro, but subject to any amendments as provided in the Terms and Conditions.

That capital increase will be executed, in full or in part, by the Board of Directors or the Executive Committee, which have express powers to sub-delegate to any of their members, whenever necessary to attend to Bond conversions, by the issuance of new ordinary shares with the same par value and the same rights as the ordinary shares outstanding on the date(s) on which the corresponding capital increase decision is executed. Whenever the Board of Directors, the Executive Committee or any member of the latter executes this Decision, as indicated above, the article of the Articles of Incorporation that refers to capital shall be amended accordingly.

The number of new shares to be issued upon exercise of the right to exchange or conversion shall be determined by dividing the nominal value of the corresponding Bond(s) by the Exchange Price in force on the date of the exchange in question.

In accordance with the provisions of article 159.4 of the Consolidated Public Corporations Act, the shareholders of the Company shall not have pre-emptive subscription rights in the capital increases arising due to conversion of the Bonds into shares.

It is hereby decided to apply for the new shares to be listed on the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges and on Spain's Electronic Market (Sistema de Interconexión Bursátil—Mercado Continuo). The Board of Directors and the Executive Committee are empowered, with powers to sub-delegate to any of their members, so that any of them, without distinction, may make the corresponding requests, draft and present any appropriate documents in the terms

that they consider appropriate and take such steps as may be necessary to that end.

**D. Reports and Terms and Conditions**

This decision is adopted on the basis of the text of the motion, which has been made available to shareholders as from the time of giving notice of the Meeting of Shareholders, and, for the purposes of articles 144, 292 and 293 of the Consolidated Public Corporations Act, on the basis of the Report by the Board of Directors and the mandatory report by an auditor designated by the Mercantile Register who is not the Company's auditor, which are attached as **Appendices II and III** to this proposal.

As far as the overriding of pre-emptive subscription rights is concerned, those reports were drafted having regard to article 293 of the Consolidated Public Corporations Act and Act 3/2009, of 3 April, on structural amendments, which came into force on 4 July 2009.

The Terms and Conditions of the Bonds to which the Issue refers have also been made available to the Company's shareholders.

**E. Delegation of powers**

Without prejudice to the specific delegations of powers contained in preceding sections, it is hereby resolved to empower the Board of Directors and the Executive Committee, as broadly as may be required by law and with the express power to sub-delegate to any of their members, so that any of them, without distinction, may execute this Decision, including in particular, but not limited to:

- (a) Increasing the Company's capital by issuing and placing in circulation, at one or several times, the shares representing capital that may be necessary to convert the Bonds, and to amend the Articles of Incorporation with regard to capital, annulling the part of that capital increase that is not necessary for the conversion into shares, and requesting the listing of the shares so issued on the Madrid, Barcelona, Valencia and Bilbao Stock Exchanges and on Spain's Electronic Market (Sistema de Interconexión Bursátil—Mercado Continuo).
- (b) Remediating, clarifying, interpreting, specifying and complementing the decisions adopted by the Meeting of Shareholders in such instruments or documents as may be granted in execution of those decisions and, in particular, any defects, omissions or errors of form or substance that might prevent the decisions and their consequences from being registered in the Mercantile Register, the Official Register of the National Securities Market Commission (CNMV) or any others."

2. ***To approve a buyback programme of shares of Fomento de Construcciones y Contratas, S.A. whose purpose is to enable the Company to fulfil the obligations derived from the issuance of exchangeable bonds and to reduce the Company's capital. To approve a reduction of the capital of Fomento de Construcciones y Contratas, S.A., through the amortisation of own shares for a par value equivalent***

**to the number of new shares of the Company issued to attend to requests for exchange or conversion from holders of the Bonds.**

**Delegation of powers to the Board of Directors and the Executive Committee to execute these resolutions, including powers to sub-delegate.**

In accordance with the Board of Directors report, which has been at the shareholders' disposal since notice was given of the Meeting of Shareholders:

**A. Share buyback programme**

Under the provisions of article 3 et seq. of European Commission Regulation 2273/2003, of 22 December, to approve a programme to buy back shares of the Company for the sole purpose of (i) fulfilling the obligations deriving from the issuance of exchangeable bonds for an amount of four hundred and fifty million euro (€450,000,000) approved by the Company under the decision by the Meeting of Shareholders on 18 June 2008 by virtue of an Executive Committee decision dated 6 October 2009, by delegation of the Board of Directors on 30 September 2009 (the "Bonds"), and (ii) reducing the Company's capital by amortising the shares acquired by virtue of the programme or those already held as treasury stock (including, for this purpose, the 5,090,000 shares loaned to the Joint Lead Managers), which shall henceforth be deemed to be subject to the terms and conditions of the programme approved by the Meeting of Shareholders.

As a result of the foregoing, decision six adopted by the Meeting of Shareholders on 10 June 2009 is annulled to the extent that it has not been executed and the Company is authorised so that, directly or via any of its subsidiaries, within a period of at most five years from the date of this Meeting of Shareholders, it may acquire, at any time and on as many occasions as it sees fit, shares of the Company by any means allowed by law, all in conformity with article 75 and matching articles of the Consolidated Public Corporations Act.

It is also decided to approve the limits or requirements of such acquisitions, as follows:

- The par value of the shares acquired, added to those already held by the Company and its subsidiaries, may not at any time exceed ten per cent of the Company's capital.
- The shares acquired must have been fully paid.
- The acquisition price may not be less than the par value nor more than 20 per cent higher than the market price.

The shares acquired under the buyback programme shall be used by the Company to fulfil its exchange or conversion obligations arising from the issuance of the Bonds and/or to reduce the Company's capital, as the case may be.

**B. Capital reduction**

**¡Error! No se encuentra el origen de la referencia.** To reduce capital by amortising the corresponding number of own shares of the Company that were acquired by virtue of the share buyback programme referred to in section A above or were already held by the Company as treasury stock (including, for this purpose,

the 5,090,000 shares loaned to the Joint Lead Managers) by a nominal amount equivalent to the number of new shares issued by the Company to cater for requests to exchange the Bonds.

The capital reduction here approved shall be effected by amortising the corresponding number of own shares of the Company and shall be charged against voluntary reserves; a reserve for amortised capital shall be appropriated for the par value of the amortised shares, which may only be used subject to the same requirements as for a capital reduction, by application of article 167.3 of the Consolidated Public Corporations Act. Consequently, in accordance with the provisions of that article, the Company's creditors shall not have the right of opposition provided by article 166 of the Consolidated Public Corporations Act as a result of the capital reduction that is approved.

The reduction shall not entail the refund of contributions to shareholders as the amortised shares are owned by the company itself. Therefore, the purpose of the reduction shall be to amortise own shares.

The capital reduction here decided shall be performed at one or several times during the term of the Company's share buyback programme, immediately after each execution of the decision adopted by the Company to increase capital so as to fulfil the obligations arising from requests to exchange or convert Bonds for newly-issued shares.

**C. Delegation to the Board of Directors and the Executive Committee**

To delegate to the Board of Directors and the Executive Committee, without distinction and with powers as broad as may be required by law, the power to execute the foregoing capital reduction decision, which must be executed at one or several times during the term of the Company's share buyback programme, immediately after each execution of the decision adopted by the Company to increase capital so as to fulfil the obligations arising from requests to exchange or convert Bonds for newly-issued shares, performing such proceedings, processes and authorisations as may be necessary or required by the Consolidated Public Corporations Act and other applicable legislation and, in particular, they are empowered so that, within the period and limits stated for such execution, they may establish the date(s) of the specific capital reduction(s) on the occasion of the conversion of the Bonds, to state the amount of the reduction, making it coincide with the nominal amount by which the Company increases capital as a result of the issuance of new shares to cater for requests to exchange the Bonds at any given time, and to amend Article 5 of the Articles of Incorporation to the new amount of capital; to request delisting of the amortised shares and, generally, to adopt such decisions as may be necessary for the purposes of such amortisation and the consequent capital reduction, designating the persons to participate in formalising them."

**3. *To authorise the Board of Directors and the Executive Committee to interpret, remedy, complement, execute, register, delegate powers and adapt the decisions adopted by the Meeting of Shareholders, with express powers to sub-delegate.***

Without prejudice to the authorisations granted by the Meeting of Shareholders in the preceding decisions, it delegates in the Board of Directors and the Executive Committee, with express powers to sub-delegate to any director, powers as broad as may be required by law to establish, complete, elaborate upon and even amend the decisions adopted by the Meeting of Shareholders, to perform such proceedings as may be necessary before any public or private body or entity and to fulfil such requirements as may be required by law for their execution, with the power to complete and remedy omissions and defects in all the decisions adopted by the Meeting of Shareholders, to grant such public or private documents as they may consider necessary or advisable, also for the adaptation of the adopted decisions in view of the verbal or written feedback from the Mercantile Register and from any competent authority, functionary or institution, and to perform such actions as may be necessary or advisable to fulfil them and, in particular, to register with the Mercantile Register those which can be so registered.

The Board of Directors and the Executive Committee are empowered to delegate, to any of the Company's directors, any or all of the powers received from this Meeting of Shareholders by virtue of the preceding decisions and of this decision."

Madrid, 27 October 2009

**Appendix I**  
**Terms and Conditions**

## Appendix II

### Regulation of the Bondholders' Syndicate

## Appendix III

**Literal reproduction of the auditors' report on the Company's consolidated financial statements as of 31 December 2008**



## TÉRMINOS Y CONDICIONES

### Terms and Conditions of the Notes

*The following, save for the paragraphs in italics, are the terms and conditions of the Notes which will be incorporated by reference into the Global Certificate and endorsed on the Notes in definitive form. The use of the word “conversion” (and related terms) in the following terms and conditions of the Notes shall be construed as encompassing the exchange of Notes for existing Ordinary Shares and, when the New Issue Requirements have been met, the exchange of Notes for new Ordinary Shares.*

The issue of the euro 450,000,000 up to 500,000,000 6.50 per cent. Unsecured Convertible Notes due 2014 (the **Notes**, which expression shall, unless otherwise indicated, include any further notes issued pursuant to Condition 16 and consolidated and forming a single series with the Notes) was (save in respect of any such further notes to be issued pursuant to Condition 16) authorised by resolutions of the shareholders, the Board of Directors and the Executive Committee of Fomento de Construcciones y Contratas, S.A. (the **Issuer**) passed on 18 June 2008, 30 September 2009 and 6 October 2009, respectively. A fiscal, transfer and conversion agency agreement dated 30 October 2009 (the **Fiscal Agency Agreement**) has been entered into in relation to the Notes between the Issuer, The Bank of New York Mellon as fiscal agent (the **Fiscal Agent**, which expression shall include any successor as fiscal agent under the Fiscal Agency Agreement), the paying, transfer and conversion agents for the time being (such persons, together with the Fiscal Agent, being referred to below as the **Paying, Transfer and Conversion Agents**, which expression shall include their successors as Paying, Transfer and Conversion Agents under the Fiscal Agency Agreement) and The Bank of New York Mellon in its capacity as registrar (the **Registrar**, which expression shall include any successor as registrar under the Fiscal Agency Agreement).

Copies of the Fiscal Agency Agreement and these terms and conditions (the **Conditions**) are available during normal business hours at the specified office of each of the Paying, Transfer and Conversion Agents and the Registrar. The Noteholders are deemed to have notice of all the provisions of the Fiscal Agency Agreement and these Conditions which are applicable to them. The Fiscal Agency Agreement includes the form of the Notes. The statements in these Conditions include summaries of, and are subject to, the detailed provisions of the Fiscal Agency Agreement.

The Issuer, as required by Spanish law, has executed an *escritura pública* (the **Public Deed**) before a Spanish notary public in relation to the issue of the Notes and has registered the Public Deed with Barcelona’s Mercantile Registry. The Public Deed contains, among other information, these Conditions.

Capitalised terms used but not defined in these Conditions shall have the meanings attributed to them in the Fiscal Agency Agreement unless the context otherwise requires or unless otherwise stated.

### **1 Form, Denomination, Title and Status**

#### *(a) Form and Denomination*

The Notes are in registered form, serially numbered, in nominal amounts of euro 50,000 each (the **Authorised Denomination**).

(b) *Title*

Title to the Notes will pass by transfer and registration as described in Condition 4. The holder (as defined below) of any Note will (except as otherwise required by law or as ordered by a court of competent jurisdiction) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any interest in it or its theft or loss (or that of the related certificate, as appropriate) or anything written on it or on the certificate representing it (other than a duly executed transfer thereof)) and no person will be liable for so treating the holder.

(c) *Status of the Notes and Subordination*

The Notes constitute direct and (subject to Condition 2 (Negative Pledge)) unsecured obligations (*créditos ordinarios*) of the Issuer and rank *pari passu* and rateably, without any preference among themselves and shall rank, save for the Senior Liabilities (as specified below), at least equally with all other present and future unsecured and unsubordinated obligations of the Issuer, save for such obligations that may be preferred by provisions of law that are mandatory and of general application.

Up to and including the Subordination End Date, the Issuer's payment obligations under the Notes will be subordinated to the payment obligations of the Issuer in respect of the Senior Liabilities to the effect that (i) the Noteholders will not be entitled to accelerate payment of any amounts under the Notes prior to the due date thereof (including if an event of default occurs and is continuing) but will be entitled to demand and subject to paragraph (ii), receive payment of amounts to the extent not paid on the due date thereof; and (ii) in the event that the Issuer is in liquidation (*liquidación*), subject to insolvency proceedings (*concurso*) or generally unable to meet its payment obligations, the Noteholders' entitlement to any payment to be received in respect of the Notes will be subordinated.

After the Subordination End Date, the payment obligations of the Issuer under the Notes shall constitute direct and (subject to Condition 2 (Negative Pledge)) unsecured obligations (*créditos ordinarios*) of the Issuer ranking *pari passu* and rateably, without any preference among themselves and at least equally with all other present and future unsecured and unsubordinated obligations of the Issuer, save for such obligations that may be preferred by provisions of law that are mandatory and of general application.

## 2 **Negative Pledge**

So long as any of the Notes remain outstanding (as defined in the Fiscal Agency Agreement), the Issuer will not create or permit to subsist, and will ensure that none of its Material Subsidiaries will create or permit to subsist, any mortgage, charge, lien, pledge or other form of encumbrance or security interest (each a **Security Interest**) upon the whole or any part of its present or future property or assets (including any uncalled capital) to secure any Relevant Indebtedness or any guarantee of or indemnity in respect of any Relevant Indebtedness unless in any such case, before or at the same time as the creation of the Security Interest, any and all action necessary shall have been taken to ensure that:

- (i) all amounts payable by the Issuer under the Notes are secured equally and rateably with the Relevant Indebtedness or guarantee or indemnity, as the case may be; or

- (ii) such other Security Interest or guarantee or other arrangement (whether or not including the giving of a Security Interest) is provided in respect of all amounts payable by the Issuer under the Notes as shall be approved by a resolution of the Syndicate of Noteholders,

provided that any Subsidiary acquired after the Closing Date may have an outstanding Security Interest with respect to Relevant Indebtedness (or any guarantee or indemnity in respect of such Relevant Indebtedness) of such Subsidiary so long as:

- (a) such Security Interest was outstanding on the date on which such Subsidiary became a Subsidiary and was not created in contemplation of such Subsidiary becoming a Subsidiary or such Security Interest was created in substitution for or to replace either such outstanding Security Interest or any such substituted or replacement Security Interest; and
- (b) the nominal amount of the Relevant Indebtedness (or any guarantee or indemnity in respect of such Relevant Indebtedness) is not increased after the date that such Subsidiary became a Subsidiary.

### 3 Definitions

In these Conditions, unless otherwise provided:

**Additional Issuer Conversion Shares** has the meaning provided in Condition 6(a)(ii).

**Additional Ordinary Shares** has the meaning provided in Condition 6(d).

**Aggregate Value** has the meaning provided in Condition 6(a)(ii).

**Authorised Denomination** has the meaning provided in Condition 1(a).

**business day** means, in relation to any place, a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets are open for business in that place.

**Closing Date** means 30 October 2009.

**Closing Price** means, in respect of any Trading Day, the last officially published price of the Ordinary Shares by the Relevant Stock Exchange on that Trading Day.

**CNMV** has the meaning provided in Condition 7(b).

**Commissioner** has the meaning provided in Condition 14(a).

**control** means (a) the acquisition or control of more than 50% of the Voting Rights or (b) the right to appoint and/or remove all or the majority of the members of the Issuer's board of directors or other governing body, whether obtained directly or indirectly, and whether obtained by ownership of share capital, the possession of Voting Rights, contract or otherwise and "controlled" shall be construed accordingly.

**Conversion Commencement Date** has the meaning provided in Condition 6(a)(i).

**Conversion Date** has the meaning provided in Condition 6(g).

**Conversion Notice** has the meaning provided in Condition 6(g).

**Conversion Period** has the meaning provided in Condition 6(a)(i).

**Conversion Price** has the meaning provided in Condition 6(a)(i).

**Conversion Right** has the meaning provided in Condition 6(a)(i).

**Current Market Price** has the meaning provided in Condition 6(b)(iv).

**Designated Person** has the meaning provided in Condition 6(a)(ii).

**Distribution** has the meaning provided in Condition 6(b)(iv).

**Distribution Date** has the meaning provided in Condition 6(b)(iv).

**equity share capital** means, in relation to any entity, its issued share capital excluding any part thereof which, neither as regards dividends, nor as regards capital, carries any right to participate beyond a specified amount in a distribution.

**Extraordinary Distribution** has the meaning provided in Condition 6(b)(v).

**Fair Market Value** means, with respect to any property on any date, the fair market value of that property as determined by an Independent Financial Adviser provided that:

- (i) the Fair Market Value of a cash Distribution shall be the amount of such cash Distribution;
- (ii) the Fair Market Value of any other cash amount shall be the amount of such cash;
- (iii) where Securities, Spin-Off Securities, options, warrants or other rights are publicly traded in a market of adequate liquidity (as determined by an Independent Financial Adviser), the Fair Market Value (a) of such Securities or Spin-Off Securities shall equal the arithmetic mean of the daily Volume Weighted Average Prices of such Securities or Spin-Off Securities and (b) of such options, warrants or other rights shall equal the arithmetic mean of the daily closing prices of such options, warrants or other rights, in the case of both (a) and (b) during the period of five Trading Days on the relevant market commencing on such date (or, if later, the first such Trading Day such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded) or such shorter period as such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded; and
- (iv) where Securities, Spin-Off Securities, options, warrants or other rights are not publicly traded (as aforesaid), the Fair Market Value of such Securities, Spin-Off Securities, options, warrants or other rights shall be determined by an Independent Financial Adviser, on the basis of a commonly accepted market valuation method and taking account of such factors as it considers appropriate, including the market price per Ordinary Share, the dividend yield of an Ordinary Share, the volatility of such market price, prevailing interest rates and the terms of such Securities, Spin-Off Securities, options, warrants or other rights, including as to the expiry date and exercise price (if any) thereof.

Such amounts shall, in the case of (i) above, be translated into the Relevant Currency (if declared or paid or payable in a currency other than the Relevant Currency) at the rate of exchange used to determine the amount payable to Shareholders who were paid or are to be paid or are entitled to be paid the cash Distribution in the Relevant Currency; and in any other case, shall be translated into the Relevant Currency (if expressed in a currency other than the Relevant Currency) at the Prevailing Rate on that date. In addition, in the case of (i) and (ii) above, the Fair Market Value shall be determined on a gross basis and disregarding any withholding or deduction required to be made on account of tax, and disregarding any associated tax credit.

**Final Maturity Date** means 30 October 2014.

**Iberclear** means the Spanish clearing and settlement system (*Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.*).

**Independent Financial Adviser** means an independent financial institution of international repute appointed by the Issuer at its own expense from time to time and whenever required by these Conditions.

**Interest** has the meaning provided in Condition 6(e).

**Interest Payment Date** has the meaning provided in Condition 5(a).

**Issuer Conversion Date** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Notice** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Retroactive Adjustment** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Right** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Right Reference Date** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Settlement Notice** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Settlement Notice Cut-Off Date** has the meaning provided in Condition 6(a)(ii).

**Issuer Conversion Settlement Period** has the meaning provided in Condition 6(a)(ii).

**Limited-Recourse Financing** means any indebtedness which is, or is expected to be, recorded as "limited recourse project financing loans" in the Issuer's annual consolidated financial statements.

**Limited-Recourse Subsidiary** means any present or future Subsidiary of the Issuer, the principal business of which involves the ownership, acquisition, construction, creation, development, maintenance and/or operation of an asset (whether or not an asset of the Issuer or any of its Subsidiaries), or any associated rehabilitation works which has been or is intended to be primarily financed with Limited-Recourse Financing.

**Madrid/Barcelona business day** means a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets are open for business in Madrid and Barcelona.

**Market Price** means the Volume Weighted Average Price of an Ordinary Share on the relevant Reference Date, provided that if any Distribution or other entitlement in respect of the Ordinary Shares is announced on or prior to the relevant Conversion Date in circumstances where the record date or other due date for the establishment of entitlement in respect of such Distribution or other entitlement shall be on or after the Conversion Date and if, on the relevant Reference Date, the Volume Weighted Average Price of an Ordinary Share is based on a price ex-Distribution or ex-any other entitlement, then such price shall be increased by an amount equal to the Fair Market Value of such dividend or entitlement per Ordinary Share as at the date of first public announcement of such Distribution or entitlement (or if that is not a Trading Day, the immediately preceding Trading Day).

**Material Subsidiary** means, at any relevant time, a Subsidiary of the Issuer (not being a Limited Recourse Subsidiary):

- (a) whose total assets or net sales (or, where the Subsidiary in question prepares consolidated accounts, whose total consolidated assets or net sales) at any relevant time represent no less than 5% of the total consolidated assets or net sales, respectively, of the Issuer and its Subsidiaries, as calculated by reference to the then latest consolidated audited accounts or consolidated six-monthly reports of the Issuer and the latest accounts or six-monthly reports of each relevant Subsidiary (consolidated or, as the case may be, unconsolidated) prepared in accordance with International Financial Reporting Standards, provided that in the case of a Subsidiary acquired after the end of the financial period to which the then

latest consolidated audited accounts or consolidated six-monthly reports of the Issuer relate, then for the purpose of applying each of the foregoing tests, the reference to the Issuer's latest consolidated audited accounts or consolidated six-monthly reports shall be deemed to be a reference to such accounts or reports as if such Subsidiary had been shown therein by reference to its then latest relevant financial statements, adjusted as deemed appropriate by the auditors of the Issuer for the time being after consultation with the Issuer; or

- (b) to which is transferred all or substantially all of the assets and undertaking of a Subsidiary which, immediately prior to such transfer, is a Material Subsidiary.

**New Issue Requirements** has the meaning provided in Condition 6(g).

**Non Pre-Emptive Issue of Securities** has the meaning provided in Condition 6(b)(iii).

**Noteholder** and **holder** mean the person in whose name a Note is registered in the Register (as defined in Condition 4(a)).

**Ordinary Shares** means fully paid ordinary shares in the capital of the Issuer currently with a par value of euro 1.00 each.

**Other Securities** means equity securities of the Issuer (including hybrid instruments) other than Ordinary Shares.

a **person** includes any individual, company, corporation, firm, partnership, joint venture, undertaking, association, unincorporated association, limited liability company, organisation, trust, state or agency of a state (in each case whether or not being a separate legal entity).

**Prevailing Rate** means, in respect of any currencies on any day, the spot rate of exchange between the relevant currencies prevailing as at or about 12.00 noon (London time) on that date as appearing on or derived from the Relevant Page or, if such a rate cannot be determined at such time, the rate prevailing as at or about 12.00 noon (London time) on the immediately preceding day on which such rate can be so determined or if such rate cannot be so determined by reference to the Relevant Page, the rate determined in such other manner as an Independent Financial Adviser shall prescribe.

**Purchase Rights** has the meaning provided in Condition 6(b)(ii).

**Put Date** has the meaning provided in Condition 7(b).

**Put Exercise Notice** has the meaning provided in Condition 7(b).

**Put Period** has the meaning provided in Condition 7(b).

**Put Price** has the meaning provided in Condition 7(b).

**Record Date** has the meaning provided in Condition 8(c).

**Reference Date** has the meaning provided in Condition 6(h).

**Registry Date** has the meaning provided in Condition 6(g).

**Regulations** has the meaning provided in Condition 14(a).

**Relevant Currency** means euro or, if at the relevant time or for the purposes of the relevant calculation or determination, the Spanish Stock Exchanges are not the Relevant Stock Exchange, the currency in which the Ordinary Shares are quoted or dealt in on the Relevant Stock Exchange at such time.

**Relevant Date** means, in respect of any Note, whichever is the later of (i) the date on which payment in respect of it first becomes due and (ii) if any amount of the money payable is improperly withheld or refused the date on which payment in full of the amount outstanding is made or (if earlier) the date on which notice is duly given by the Issuer or to the Noteholders in accordance with Condition 15 that, upon further presentation of the Note, where required pursuant to these Conditions, being made, such payment will be made, provided that such payment is in fact made as provided in these Conditions.

**Relevant Distribution** has the meaning provided in Condition 6(b)(v).

**Relevant Fiscal Year** has the meaning provided in Condition 6(b)(v).

**Relevant Indebtedness** means any present or future indebtedness (whether being principal, interest or other amounts), in the form of or evidenced by notes, bonds, debentures, loan stock or other similar debt instruments, whether issued for cash or in whole or in part for a consideration other than cash, and which are, or are capable of being, quoted, listed or ordinarily dealt in or traded on any recognised stock exchange, over-the-counter or other securities market but shall not in any event include any Limited-Recourse Financing.

**Relevant Page** means the relevant page on Bloomberg or Reuters or such other information services provider which displays the relevant information.

**Relevant Person** has the meaning provided in Condition 7(b).

**Relevant Person Triggering Event** has the meaning provided in Condition 7(b).

**Relevant Stock Exchange** means the Spanish Stock Exchanges or if at the relevant time the Ordinary Shares are not at that time listed and admitted to trading on the Spanish Stock Exchanges, the principal stock exchange or securities market on which the Ordinary Shares are then listed or quoted or dealt in.

**Retroactive Adjustment** has the meaning provided in Condition 6(d).

**Securities** means any securities including, without limitation, shares in the capital of the Issuer, or options, warrants or other rights to subscribe for or purchase or acquire shares in the capital of the Issuer.

**Senior Creditors** means the lenders (*Entidades Acreditantes* or *Prestamistas*) from time to time under each Senior Facilities Agreement.

**Senior Facilities Agreement** means each of:

- (i) the up to €1,225,000,000 credit facility agreement entered into on 8 May 2008 between the Issuer, as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A., FCC Versia, S.A. and Aqualia Gestión Integral del Agua, S.A., as guarantors, and the syndicate of financial institutions named therein, as lenders and repayable on the final maturity date of 8 May 2011;
- (ii) the up to €451,000,000 facility agreement entered into on 29 April 2009 between the Issuer, as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A. and FCC Versia, S.A., as guarantors, and the syndicate of financial institutions named therein, as lenders and repayable on the final maturity date of 29 April 2012
- (iii) €25,000,000 credit facility agreement entered into on 9 June 2009 between the Issuer as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A. and FCC Versia, S.A. as guarantors, and Fortis Bank, S.A. Sucursal en España as lender, and repayable on the final maturity date of 9 June 2012;

- (iv) the up to €800,000,000 amortising credit facility agreement entered into on 19 July 2007 between the Issuer, as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A., FCC Versia, S.A. and Aqualia Gestión Integral del Agua, S.A., as guarantors, and the syndicate of financial institutions named therein, as lenders; and repayable in instalments, the final such instalment falling due on 19 July 2012;
- (v) the up to €175,00,000 credit facility agreement to be entered into by not later than 31 December 2009 between the Issuer as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A. and FCC Versia, S.A. as guarantors and the European Investment Bank as lender, and repayable on a final maturity date to fall due not later than 31 December 2012;
- (vi) the up to \$186,900,000 amortising credit facility agreement entered into on 10 July 2008 between the Issuer and Dedalo Patrimonial, S.L. Unipersonal, as borrowers, the Issuer, as guarantor, and the syndicate of financial institutions named therein, as lenders and repayable in instalments, the final such instalment falling due on 10 October 2013;
- (vii) the €630,554,225 and £153,850,000 amortising loan facility agreement entered into on 25 January 2007 between the Issuer, as borrower, FCC Construcción, S.A., FCC Medio Ambiente, S.A., FCC Versia, S.A. and Aqualia Gestión Integral del Agua, S.A., as guarantors, and the syndicate of financial institutions named therein, as lenders; and repayable in instalments, the final such instalment falling due on 30 December 2013;

provided that if, on or after 6 October 2009, the Senior Creditors under any of the above Senior Facility Agreements agree in writing to (i) increase the principal amount and/or interest payable (other than on terms expressly contemplated in the applicable Senior Facilities Agreement in effect on 6 October 2009), or (ii) extend the due date for scheduled payments of any principal amount (including by virtue of the Senior Creditors agreeing to any extension request delivered under the terms of the applicable Senior Facilities Agreement), then the amounts owed by the Issuer to the Senior Creditors under such Senior Facilities Agreement shall no longer be considered Senior Liabilities for the purposes of these Conditions.

**Senior Liabilities** means amounts owed by the Issuer to the Senior Creditors under the Senior Facilities Agreement.

**Share Record Date** has the meaning provided in Condition 6(g).

**Shareholders** means the holders of Ordinary Shares.

**Spanish Stock Exchanges** means the Madrid, Barcelona, Bilbao and Valencia stock exchanges and the automated quotation system.

**Spin-Off** means:

- (a) a distribution of Spin-Off Securities by the Issuer to Shareholders as a class; or
- (b) any issue, transfer or delivery of any property or assets (including cash or shares or securities of or in or issued or allotted by any entity) by any entity (other than the Issuer) to Shareholders as a class pursuant to any arrangements with the Issuer or any of its Subsidiaries.

**Spin-Off Securities** means equity share capital of an entity other than the Issuer or options, warrants or other rights to subscribe for or purchase equity share capital of an entity other than the Issuer.

**Subordination End Date** means the date upon which the Senior Liabilities (excluding, for the avoidance of doubt, those liabilities which have ceased to be Senior Liabilities by virtue of the operation of the proviso in the definition of Senior Facilities Agreement) have been paid in full.



**Subsidiary** of any person means (a) a company more than 50% of the Voting Rights of which is owned or controlled, directly or indirectly, by such person or by one or more other Subsidiaries of such person or by such person and one or more Subsidiaries thereof or (b) any other person in which such person, or one or more other Subsidiaries of such person or such person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

**Syndicate of Noteholders** has the meaning provided in Condition 14(a).

**TARGET Business Day** means a day on which the TARGET System is operating.

**TARGET System** means the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System.

**Tender Offer** has the meaning provided in Condition 7(b).

**Tender Offer Period** has the meaning provided in Condition 7(b).

**Tender Offer Triggering Event** has the meaning provided in Condition 7(b).

**Threshold Amount** has the meaning provided in Condition 6(b)(v).

**Trading Day** means any day (other than Saturday or Sunday) on which the Relevant Stock Exchange is open for business and Ordinary Shares may be dealt in and is also a Madrid/Barcelona business day.

**Triggering Event** has the meaning provided in Condition 7(b).

**Triggering Event Period** has the meaning provided in Condition 7(c).

**Volume Weighted Average Price** means, in respect of an Ordinary Share, Security or, as the case may be, a Spin-Off Security on any Trading Day, the order book volume-weighted average price of an Ordinary Share, Security or, as the case may be, a Spin-Off Security published by or derived (in the case of an Ordinary Share) from Bloomberg page VAP or (in the case of a Security (other than Ordinary Shares) or Spin-Off Security) from the principal stock exchange or securities market on which such Securities or Spin-Off Securities are then listed or quoted or dealt in, if any or, in any such case, such other source as shall be determined to be appropriate by an Independent Financial Adviser on such Trading Day, provided that if on any such Trading Day such price is not available or cannot otherwise be determined as provided above, the Volume Weighted Average Price of an Ordinary Share, Security or a Spin-Off Security, as the case may be, in respect of such Trading Day shall be the Volume Weighted Average Price, determined as provided above, on the immediately preceding Trading Day on which the same can be so determined or, if such price cannot be so determined, as determined in good faith by an Independent Financial Adviser.

**Voting Rights** means the right generally to vote at a general meeting of shareholders of the Issuer (irrespective of whether or not, at the time, stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency).

References to any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under such modification or re-enactment.

References to any issue or offer or grant to Shareholders "as a class" or "by way of rights" shall be taken to be references to an issue or offer or grant to all or substantially all Shareholders, other than Shareholders to whom, by reason of the laws of any territory or requirements of any recognised regulatory body or any other stock exchange or securities market in any territory or

in connection with fractional entitlements, it is determined not to make such issue or offer or grant.

In making any calculation or determination of Current Market Price or Volume Weighted Average Price, such adjustments (if any) shall be made as an Independent Financial Adviser considers appropriate to reflect any consolidation or sub-division of the Ordinary Shares or any issue of Ordinary Shares by way of capitalisation of profits or reserves, or any like or similar event.

For the purposes of Conditions 6(b), (d), (g) and (h) and Condition 10 only, (a) references to the “issue” of Ordinary Shares shall include the transfer and/or delivery of Ordinary Shares, whether newly issued and allotted or previously existing or held by or on behalf of the Issuer or any of its Subsidiaries, and (b) Ordinary Shares held by or on behalf of the Issuer or any of its respective Subsidiaries (and which, in the case of Condition 6(b)(i), (ii) and (iv), do not rank for the relevant right or other entitlement) shall not be considered as or treated as “in issue”.

#### **4 Registration and Transfer of Notes**

##### *(a) Registration*

The Issuer will cause a register (the **Register**) to be kept at the specified office of the Registrar outside the United Kingdom on which will be entered the names and addresses of the holders of the Notes and the particulars of the Notes held by them and of all transfers, redemptions and conversions of Notes.

##### *(b) Transfer*

Notes may, subject to the terms of the Fiscal Agency Agreement and to Conditions 4(c) and 4(d), be transferred in whole or in part in an Authorised Denomination by lodging the relevant Note (with the form of application for transfer in respect thereof duly executed and duly stamped where applicable) at the specified office of the Registrar or any Paying, Transfer and Conversion Agent.

No transfer of a Note will be valid unless and until entered on the Register. A Note may be registered only in the name of, and transferred only to, a named person (or persons, not exceeding four in number).

The Registrar will within 7 (seven) business days or such longer period as may be required for the Registrar to comply with any fiscal or other requirements, in the place of the specified office of the Registrar, of any duly made application for the transfer of a Note, deliver a new Note to the transferee (and, in the case of a transfer of part only of a Note, deliver a Note for the untransferred balance to the transferor) at the specified office of the Registrar or (at the risk and, if mailed at the request of the transferee or, as the case may be, the transferor otherwise than by ordinary mail, at the expense of the transferee or, as the case may be, the transferor) mail the Note by uninsured mail to such address as the transferee or, as the case may be, the transferor may request.

##### *(c) Formalities Free of Charge*

Such transfer will be effected without charge subject to (a) the person making such application for transfer paying or procuring the payment of any taxes, duties and other governmental charges in connection therewith; (b) the Registrar being satisfied with the documents of title and/or identity of the person making the application; and (c) such reasonable regulations as the Issuer may from time to time agree with the Registrar.

*(d) Closed Periods*

Neither the Issuer nor the Registrar will be required to register the transfer of any Note (or part thereof) (a) during the period of 15 (fifteen) days immediately prior to the Final Maturity Date (b) in respect of which a Conversion Notice has been delivered in accordance with Condition 6(g) or where an Issuer Conversion Notice shall have been given pursuant to Condition 6(a)(ii); or (c) in respect of which a holder has exercised its right to require redemption pursuant to Condition 7(b); or (d) during the period of 15 (fifteen) days ending on (and including) any Record Date (as defined in Condition 8(c)) in respect of any payment of interest on the Notes.

## 5 Interest

*(a) Interest Rate*

The Notes bear interest from and including the Closing Date at the rate of 6.50% per cent. per annum calculated by reference to the nominal amount thereof and payable semi-annually in arrear in equal instalments on 30 April and 30 October in each year (each an **Interest Payment Date**), commencing with the Interest Payment Date falling on 30 April 2010.

Where interest is required to be calculated for any period which is shorter than an Interest Period it will be calculated on the basis of the number of days in the relevant period from (and including) the first day of such period to (but excluding) the last day of such period divided by the product of the number of days in the Interest Period in which the relevant period falls and the number of Interest Periods normally ending in any year.

**Interest Period** means the payment period beginning on (and including) the Closing Date and ending on (but excluding) the first Interest Payment Date and each successive period beginning on (and including) an Interest Payment Date and ending on (but excluding) the next succeeding Interest Payment Date.

*(b) Accrual of Interest*

Each Note will cease to bear interest (i) where the Conversion Right shall have been exercised by a Noteholder or, if applicable, where the Issuer has exercised the Issuer Conversion Right, from the Interest Payment Date immediately preceding the relevant Conversion Date or, if none, the Closing Date; or (ii) where such Note is being redeemed or repaid pursuant to Condition 7 or Condition 10, from (but excluding) the due date for redemption thereof unless, upon due presentation thereof, payment of the principal amount of the Notes is improperly withheld or refused, in which event interest will continue to accrue as provided in Condition 7(a) (both before and after judgment) until whichever is the earlier of (a) the day on which all sums due in respect of such Note up to that day are received by or on behalf of the relevant holder, and (b) the day 7 (seven) days after the Fiscal Agent has notified Noteholders of receipt of all sums due in respect of all the Notes up to that seventh day (except to the extent that there is failure in the subsequent payment to the relevant holders under these Conditions).

## 6 Conversion of Notes

### (a) *Conversion Period and Conversion Price*

#### (i) Exercise of Conversion Rights by Noteholders

Subject as provided below, each Note shall entitle the holder (a **Conversion Right**) to convert such Note into existing Ordinary Shares and/or, if the New Issue Requirements have been met, new Ordinary Shares, in each case credited as fully paid, subject to and as provided in these Conditions.

The number of Ordinary Shares to be issued or delivered on exercise of a Conversion Right in respect of a Note shall be determined by dividing the nominal amount of the relevant Note by the conversion price (the **Conversion Price**) in effect on the relevant Conversion Date.

The initial Conversion Price is euro 39.287 per Ordinary Share. On the basis of the initial Conversion Price, each euro 50,000 nominal amount of Notes would entitle the holder to receive (subject as provided in these Conditions) 1,272.68 Ordinary Shares. The Conversion Price is subject to adjustment in the circumstances described in Condition 6(b).

A Noteholder may exercise the Conversion Right in respect of a Note by delivering such Note (together with a duly completed Conversion Notice (as defined below)) to the specified office of any Paying, Transfer and Conversion Agent in accordance with Condition 6(g) whereupon the Issuer shall (subject as provided in these Conditions) procure the delivery, to or as directed by the relevant Noteholder of Ordinary Shares credited as paid up in full as provided in this Condition 6.

Subject to, and as provided in these Conditions, the Conversion Right in respect of a Note may be exercised, at the option of the holder thereof, at any time (subject to any applicable fiscal or other laws or regulations and as hereinafter provided) from 15 December 2009 (the **Conversion Commencement Date**) to the close of business (at the place where the relevant Note is delivered for conversion) on the date falling 7 (seven) Trading Days prior to the Final Maturity Date (both days inclusive) or, if the Issuer shall exercise the Issuer Conversion Right pursuant to Condition 6(a)(ii), up to the close of business on the sixth Trading Day prior to the last possible date on which the Issuer Conversion Settlement Period (as defined in Condition 6(a)(ii) could end, unless there shall be default in making payment in respect of such Note on such date fixed for redemption, in which event the Conversion Right shall extend up to (and including) the close of business (at the place aforesaid) on the date on which the full amount of such payment becomes available for payment and notice of such availability has been duly given in accordance with Condition 15 or, if earlier, the Final Maturity Date; provided that, in each case, if the final such date for the exercise of Conversion Rights is not a business day at the place aforesaid, then the period for exercise of the Conversion Right by Noteholders shall end on the immediately preceding business day at the place aforesaid.

Without prejudice to the foregoing paragraph of this Condition 6(a)(i), Conversion Rights may not be exercised in respect of a Note which the relevant holder has either (i) given notice pursuant to Condition 10; or (ii) exercised its right to require the Issuer to redeem pursuant to Condition 7(b).

Conversion Rights may not be exercised by a Noteholder in circumstances where the relevant Conversion Date would fall during the period commencing on the Record Date in respect of any payment of interest on the Notes and ending on the relevant Interest Payment Date (both days inclusive).

The period during which Conversion Rights may (subject as provided below) be exercised by a Noteholder is referred to as the **Conversion Period**.

Conversion Rights may only be exercised in respect of an Authorised Denomination. Where Conversion Rights are exercised in respect of part only of a Note, the old Note shall be cancelled and a new Note for the balance thereof shall be issued in lieu thereof without charge but upon payment by the holder of any taxes, duties and other governmental charges payable in connection therewith and the Registrar will within 7 (seven) business days, in the place of the specified office of the Registrar, following the relevant Conversion Date deliver such new Note to the Noteholder at the specified office of the Registrar or (at the risk and, if mailed at the request of the Noteholder otherwise than by ordinary mail, at the expense of the Noteholder) mail the new Note by uninsured mail to such address as the Noteholder may request.

Fractions of Ordinary Shares will not be issued or delivered on exercise of Conversion Rights or pursuant to Condition 6(d). However, and except where any individual entitlement would be less than euro one (1.00), a cash payment shall be made by the Issuer in respect of any such fraction determined by reference to the Current Market Price (as defined in Condition 6(b)) per Ordinary Share on the Trading Day (as defined in Condition 3) immediately preceding the relevant Conversion Date and the Issuer shall make payment of the relevant amount to the relevant holder not later than 5 (five) Madrid/Barcelona business days (as defined in Condition 3) following the relevant Conversion Date. If the Conversion Right in respect of more than one Note is exercised at any one time such that Ordinary Shares to be delivered on conversion pursuant to Condition 6(d) are to be registered in the same name, the number of such Ordinary Shares to be delivered in respect thereof shall be calculated on the basis of the aggregate nominal amount of such Notes being so converted and rounded down to the nearest whole number of Ordinary Shares.

The Issuer will procure that Ordinary Shares to be delivered or transferred on conversion will be delivered or transferred to the holder of the Notes completing the relevant Conversion Notice or his nominee.

(ii) Issuer Conversion Right

The Issuer shall have the right to convert all but not some only of the Notes into Ordinary Shares at any time on or after the Conversion Commencement Date (the **Issuer Conversion Right**), subject as provided in these Conditions.

The Issuer may exercise the Issuer Conversion Right only:

- (A) at any time on or after 20 November 2012, if the Aggregate Value of a Note in the principal amount of €50,000 on at least 20 (twenty) Trading Days in any period of 30 (thirty) consecutive Trading Days ending not earlier than 5 (five) Trading Days prior to the giving of the relevant Issuer Conversion Notice, exceeds euro 65,000 on such Trading Day; or

- (B) if, at any time prior to the date the relevant Issuer Conversion Notice is given, Conversion Rights shall have been exercised and/or purchases (and corresponding cancellations) and/or redemptions effected in respect of 85% per cent. or more in nominal amount of the Notes originally issued (which shall include any further Notes issued pursuant to Condition 16); or
- (C) on a date not less than 15 (fifteen) nor more than 60 (sixty) days following the end of the Put Period.

As used above, **Aggregate Value** of a Note in the principal amount of €50,000 on a Trading Day means €50,000 divided by the Conversion Price on such day multiplied by the Closing Price of an Ordinary Share as derived from the Relevant Stock Exchange.

For the purposes of Condition 6(a)(ii)(A), if on any Trading Day in such 30 (thirty) Trading Day period the Closing Price on such Trading Day shall have been quoted cum-Distribution (or cum-any other entitlement) the Closing Price of an Ordinary Share on such Trading Day shall be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Distribution or entitlement per Ordinary Share as at the date of first public announcement of such Distribution (or entitlement), which amount shall be determined by an Independent Financial Adviser.

In order to exercise the Issuer Conversion Right, the Issuer shall give notice (an Issuer Conversion Notice) to the Noteholders in accordance with Condition 15.

An Issuer Conversion Notice shall specify:

- (i) the period (the **Issuer Conversion Settlement Period**) during which the date on which the Notes shall be converted and Ordinary Shares delivered to the converting Noteholders shall fall (the **Issuer Conversion Date**), which date shall fall not less than 12 (twelve) nor more than 15 (fifteen) Trading Days after the date of the Issuer Conversion Notice;
- (ii) the Conversion Price, the aggregate principal amount of the Notes outstanding and the closing price of the Ordinary Shares as derived from the Relevant Stock Exchange, in each case as at the latest practicable date prior to publication of the Issuer Conversion Notice; and
- (iii) the Issuer Conversion Settlement Notice Cut-off Date (as defined below).

The Issuer may not exercise the Issuer Conversion Right if an Event of Default shall have occurred and is continuing on or prior to the date of the relevant Issuer Conversion Notice (and, if given, any such Issuer Conversion Notice shall be null and void) and any Issuer Conversion Notice shall be null and void if at any time on or prior to the relevant Issuer Conversion Date an Event of Default shall have occurred and is continuing.

The number of Ordinary Shares to be issued or transferred and delivered on exercise of the Issuer Conversion Right in respect of each €50,000 principal amount of Notes to be converted will be determined by dividing such principal amount by the Conversion Price in effect on the relevant Issuer Conversion Date, provided that fractions of Ordinary Shares will not be delivered on an exercise of the Issuer Conversion Right and no cash payment or other adjustment will be made in lieu thereof. However:

- (a) except where any individual entitlement would be less than euro one (1.00), a cash payment shall be made by the Issuer in respect of any such fraction determined by reference to the Current Market Price per Ordinary Share on the Trading Day immediately preceding the relevant Issuer Conversion Date and the Issuer shall make payment of the relevant amount to the relevant holder not later than 5 (five) Madrid/Barcelona business days (as defined in Condition 3) following the relevant Issuer Conversion Date;
- (b) if one or more Issuer Conversion Settlement Notices and relevant Notes are delivered by not later than the Issuer Conversion Settlement Notice Cut-off Date as provided below such that the Ordinary Shares to be issued or transferred and delivered in respect thereof are to be registered in the same name, the number of such Ordinary Shares to be delivered in respect thereof shall be calculated on the basis of the aggregate principal amount of such Notes being so converted and rounded down to the nearest whole number of Ordinary Shares; and
- (c) where Ordinary Shares are to be issued to the Designated Person pursuant as provided below, the number of Ordinary Shares to be issued and transferred and delivered shall be calculated on the basis of the aggregate principal amount of Notes in respect of which such issue or transfer and delivery is to be made.

If the Issuer exercises the Issuer Conversion Right, the following provisions shall apply:

- (i) In order to obtain delivery of the relevant Ordinary Shares, the relevant Noteholder must deliver a duly completed notice substantially in the form set out in the Fiscal Agency Agreement (the **Issuer Conversion Settlement Notice**) a copy of which may be obtained from the specified office of any Paying, Transfer and Conversion Agent, together with the relevant Notes to the specified office of any Paying, Transfer and Conversion Agent at least 6 (six) Trading Days prior to the last possible day on which the Issuer Conversion Settlement Period could end (the **Issuer Conversion Notice Cut-off Date**). If the delivery of such Issuer Conversion Settlement Notice is made after the end of normal business hours at the specified office of the relevant Paying, Transfer and Conversion Agent or on a day which is not a business day in such place, such delivery shall be deemed for all purposes of these Conditions to have been made on the next following such business day.
- (ii) If the Issuer Conversion Settlement Notice and relevant Notes are not delivered to a Paying, Transfer and Conversion Agent on or before the Issuer Settlement Conversion Notice Cut-off Date, then on the Issuer Conversion Date, the relevant Ordinary Shares will be issued or transferred and delivered to a person (the **Designated Person**) selected by the Issuer which shall be resident for tax purposes in the Kingdom of Spain. The Issuer shall procure that all of such Ordinary Shares shall be sold by or on behalf of the Designated Person as soon as practicable based on advice from an Independent Financial Adviser and subject to any necessary consents being obtained and to the deduction by or on behalf of the Designated Person of any amount payable in respect of its liability to taxation and, subject to subparagraph (vi) below, the payment of any capital, stamp, issue, registration and/or transfer taxes and duties (if any) and any fees or costs incurred by or on behalf of the Designated Person in connection with the issue, allotment and sale thereof the net proceeds of sale

paid to, or to the order of, the Fiscal Agent. The net proceeds of such sale shall be paid to, or to the order of, the Fiscal Agent and such net proceeds shall be held by or on behalf of the Commissioner and distributed rateably to the holders of the relevant Notes in accordance with the provisions of the Agency Agreement and otherwise in such manner and at such time as the Fiscal Agent shall determine and notify to the Noteholders in accordance with Condition 15. Payment of such net proceeds to, or to the order of, the Fiscal Agent shall discharge in full the obligations of the Issuer in respect of the relevant Notes.

- (iii) The Fiscal Agent shall have no liability in respect of the exercise or non exercise of any power or discretion pursuant to subparagraph (ii) above or in respect of any sale of Ordinary Shares or Additional Issuer Conversion Shares, whether for the timing of any such sale or the price at or manner in which any such Ordinary Shares are sold or the inability to sell any such Ordinary Shares or Additional Issuer Conversion Shares.
- (iv) Subject as provided in this Condition 6(a)(ii), an Issuer Conversion Notice shall be irrevocable. Failure to properly complete and deliver an Issuer Conversion Settlement Notice and deliver the relevant Notes may result in such notice being treated as null and void and the Issuer shall in respect of the Notes the subject of such null and void Issuer Conversion Settlement Notice, be entitled to effect settlement in accordance with subparagraph (ii) above. Any determination as to whether such notice has been properly completed and delivered as provided in these Conditions shall be made by the or the Fiscal Agent in its sole and absolute discretion and shall be conclusive and binding on the relevant Noteholders.
- (v) Ordinary Shares to be issued or transferred and delivered as contemplated by this Condition 6(a)(ii) shall be deemed to be issued or transferred and delivered as of the Issuer Conversion Date or, in the case of any Additional Issuer Conversion Shares as of the date the relevant Issuer Conversion Retroactive Adjustment takes effect (each such date an Issuer Conversion Right Reference Date).
- (vi) A Noteholder or the Designated Person must pay (in the case of the Designated Person by means of deduction from the net proceeds of sale referred to in subparagraph (ii) above or from amounts otherwise available to the Designated Person for the purpose) any taxes and capital, stamp, issue and registration and transfer taxes and duties arising on the relevant Ordinary Shares (other than any capital, stamp, issue, registration and transfer taxes and duties payable in the United Kingdom, Spain, Belgium and Luxembourg in respect of the allotment, issue or transfer and delivery of the Ordinary Shares in respect of such exercise (including Additional Issuer Conversion Shares) which shall be paid by the Issuer) and such Noteholder or the Designated Person (as the case may be) must pay (in the case of the Designated Person, by way of deduction from the net proceeds of sale as aforesaid or from amounts otherwise available to the Designated Person for this purpose) all, if any, taxes arising by reference to any disposal or deemed disposal of a Note or interest thereon in connection with such conversion.
- (vii) Ordinary Shares to be issued on exercise of the Issuer Conversion Right will be issued in "book-entry" form eligible for deposit at Iberclear and will be credited to (a) the Iberclear account specified in the Issuer Conversion



Settlement Notice or (b) if a Noteholder does not specify a valid Iberclear account in the Issuer Conversion Settlement Notice, or the relevant Issuer Conversion Settlement Notice is null and void for any other reason (as specified above) the Iberclear account specified by the Designated Person, in each case, on the Issuer Conversion Date.

- (viii) Ordinary Shares to be issued or transferred and delivered pursuant to this Condition 6(a)(ii) will be fully paid and will in all respects rank pari passu with the fully paid Ordinary Shares in issue on the date of the relevant Issuer Conversion Notice or, in the case of Additional Issuer Conversion Shares, the relevant Issuer Conversion Right Reference Date, except in any such case for any right excluded by mandatory provisions of applicable law, and except that such Ordinary Shares or, as the case may be, Additional Issuer Conversion Shares will not rank for (or, as the case may be, the relevant holder shall not be entitled to receive) any rights, distributions or payments the record date or other due date for the establishment of entitlement for which falls prior to the date of the Issuer Conversion Notice or, as the case may be, the relevant Issuer Conversion Right Reference Date.
- (ix) If the date of the Issuer Conversion Notice shall be after the record date in respect of any event giving rise to an adjustment to the Conversion Price pursuant to Condition 6(b), but before the relevant adjustment becomes effective under Condition 6(b) (such adjustment, an **Issuer Conversion Retroactive Adjustment**), then the Issuer shall (conditional upon the relevant adjustment becoming effective) procure that there shall be issued or transferred and delivered to the relevant Noteholder, in accordance with the instructions contained in the relevant Issuer Conversion Settlement Notice or, as the case may be, to the Designated Person, such additional number of Ordinary Shares (if any) (the **Additional Issuer Conversion Shares**) as, together with the Ordinary Shares issued or to be transferred and delivered on conversion of the relevant Note, is equal to the number of Ordinary Shares which would have been required to be issued or delivered on conversion of such Note if the relevant adjustment to the Conversion Price had been made and become effective immediately prior to the Issuer Conversion Date. Where such Additional Issuer Conversion Shares are to be issued to the Designated Person, the provisions of subparagraph (ii) above relating to the sale of Ordinary Shares shall apply mutatis mutandis.

(b) *Adjustment of Conversion Price*

Upon the occurrence of any of the events described in Condition 6(b)(i) to (v) below, the Conversion Price shall be adjusted as follows:

- (i) *Increase of capital by means of capitalisation of reserves, profits or premia by distribution of Ordinary Shares, or division or consolidation of Ordinary Shares:*

Subject to Condition 6(e), in the event of a change in the Issuer's share capital as a result of capitalisation of reserves, profits or premia, by means of the distribution of Ordinary Shares, and in the event of division or consolidation of Ordinary Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such change by the result of the following formula:

$$N_{\text{Old}} / N_{\text{New}}$$

where:

$N_{Old}$  is the number of Ordinary Shares existing before the change in share capital; and

$N_{New}$  is the number of Ordinary Shares existing after the change in share capital.

Such adjustment shall become effective on the date on which such Ordinary Shares are distributed or, in the event of division or consolidation of Ordinary Shares, on the first day the Ordinary Shares are traded on the new basis on the Relevant Stock Exchange.

- (ii) *Issues of Ordinary Shares or Other Securities to Shareholders by way of conferring subscription or purchase rights:*

Subject to Condition 6(e), if (i) the Issuer issues or grants to Shareholders any rights or options, warrants or other rights per Ordinary Share to subscribe for or acquire Ordinary Shares, Other Securities or securities convertible or exchangeable into Ordinary Shares or Other Securities or (ii) any third party with the agreement of the Issuer issues to Shareholders any rights, options or warrants to purchase any Ordinary Shares, Other Securities or securities convertible or exchangeable into Ordinary Shares or Other Securities (the rights referred to in (i) and (ii) collectively and individually being the **Purchase Rights**), in each case in circumstances whereby such Purchase Rights are issued or granted to holders as a class, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the result of the following formula:

$$(P_{cum} - R) / P_{cum}$$

where:

$P_{cum}$  is the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to whichever is the later of (x) the last Trading Day preceding the date on which the Ordinary Shares are first traded ex-Purchase Rights on the Relevant Stock Exchange or (y) the Trading Day when the price for the Purchase Right is announced, or, if the day the subscription or purchase price is announced is not a Trading Day, the next following Trading Day; and

R is the value of the Purchase Right relating to one Ordinary Share or Other Security, such value to be calculated as follows:

- (A) in the event the Purchase Rights relate to Ordinary Shares:

$$R = P_{cum} - TERP$$

where:

$$TERP = (N_{old} \times P_{cum} + N_{new} \times (X_{rights} + Div)) / (N_{old} + N_{new})$$

and:

TERP is the theoretical ex-Purchase Rights price; and

$N_{old}$  is the number of Ordinary Shares existing before the change in share capital; and

$N_{\text{new}}$  is the number of Ordinary Shares being newly issued; and

$X_{\text{rights}}$  is the price at which one new Ordinary Share can be subscribed, exercised or purchased; and

Div is the amount (in euro), if any, by which the dividend entitlement per existing Ordinary Share exceeds the dividend entitlement per new Ordinary Share, (x) if dividends have already been proposed to the general meeting of Shareholders but not yet paid, based on the proposed dividend amount, or (y) if dividends have not yet been proposed based on the last paid dividend;

provided, however, that no such adjustment shall be made if the subscription or purchase price at which one new Ordinary Share can be subscribed or purchased is at least 95% of the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to whichever is the later of (x) the last Trading Day preceding the date on which the Ordinary Shares are first traded ex-Purchase Rights on the Relevant Stock Exchange or (y) the Trading Day when the price for the Purchase Right is announced, or, if the day the subscription or purchase price is announced is not a Trading Day, the next following Trading Day;

- (B) in the event the Purchase Rights relate to Other Securities or to securities convertible or exchangeable into Ordinary Shares or Other Securities and where such Purchase Rights are traded on a regulated stock exchange in Switzerland, the European Union, the United States of America, Canada or Japan:

$$R = N_{\text{rights}} \times P_{\text{rights}}$$

where:

$N_{\text{rights}}$  is the number of Purchase Rights granted per Ordinary Share; and

$P_{\text{rights}}$  is the average of the last paid prices on the Relevant Stock Exchange (or, if no dealing is recorded, the arithmetic mean of the bid and offered prices) on a spot basis of one Purchase Right on each Trading Day during the time period the Purchase Rights are traded, but not longer than the first 10 (ten) Trading Days.

- (C) in all other cases where neither of the previous paragraphs (A) or (B) is applicable:

R will be determined by an Independent Financial Adviser.

Such adjustment shall become effective

- (1) in the case of Condition 6(b)(ii)(A), on the first day on which the Ordinary Shares are traded ex-Purchase Rights on the Relevant Stock Exchange;
- (2) in the case of Condition 6(b)(ii)(B), 5 (five) Trading Days after (x) the end of the period during which the Purchase Rights are

traded or (y) the 10th (tenth) Trading Day of the subscription or purchase period, whichever is sooner; and

- (3) in the case of Condition 6(b)(ii)(C), on the date determined by the Independent Financial Adviser.

(iii) *Issues of Ordinary Shares or Other Securities to Third Parties:*

Subject to Condition 6(e), if (a) the Issuer issues (whether for cash or non-cash consideration or for no consideration) (otherwise than as mentioned in Condition 6(b)(ii) above) to a third party any Ordinary Shares or options, warrants or, Other Securities or securities convertible or exchangeable into Ordinary Shares or Other Securities or (b) any third party with the agreement of the Issuer issues (whether for cash or non-cash consideration or for no consideration) (otherwise than as mentioned in Condition 6(b)(ii) above) to a third party any Ordinary Shares or options, warrants or, Other Securities or securities convertible or exchangeable into Ordinary Shares or Other Securities, in each case in circumstances whereby Purchase Rights are not issued or granted to Shareholders, (the issuance of such securities referred to in (a) and (b) collectively and individually being a **Non Pre-Emptive Issue of Securities**), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue by the result of the following formula:

$$(P_{\text{cum}} - D) / P_{\text{cum}}$$

where:

$P_{\text{cum}}$  is the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to the date of the first public announcement of the terms of the relevant Non Pre-Emptive Issue of Securities; and

D is the dilution as a result of the issue of Ordinary Shares or Other Securities, such dilution to be calculated as follows:

(A) in the event of the issue of Ordinary Shares:

$$D = P_{\text{cum}} - \text{TDP}$$

where:

$$\text{TDP} = (N_{\text{old}} \times P_{\text{cum}} + N_{\text{new}} \times (X_{\text{issue}} + \text{Div})) / (N_{\text{old}} + N_{\text{new}})$$

and:

TDP is the theoretical diluted price; and

$N_{\text{old}}$  is the number of Ordinary Shares existing before the change in share capital; and

$N_{\text{new}}$  is the number of Ordinary Shares being newly issued; and

$X_{\text{issue}}$  is the issue price at which one new Ordinary Share was issued to a third party as determined by an Independent Financial Adviser; and

Div is the amount (in euro), if any, by which the dividend entitlement per existing Ordinary Share exceeds the dividend entitlement per new Ordinary Share, (x) if dividends have

already been proposed to the general meeting of Shareholders but not yet paid, based on the proposed dividend amount, or (y) if dividends have not yet been proposed based on the last paid dividend;

provided, however, that no such adjustment shall be made if the issue price at which one new Ordinary Share is issued is at least 95% of the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to the Trading Day when the Non Pre-Emptive Issue Securities is announced, or, if the day the Non Pre-Emptive Issue of Securities is announced is not a Trading Day, the next following Trading Day;

(B) in all other cases where the previous paragraph (A) is not applicable:

D will be determined by an Independent Financial Adviser.

Such adjustment shall become effective on the date the relevant security is issued.

(iv) *Spin-offs and capital distributions:*

Subject to Condition 6(e), if in respect of a Spin-Off or a capital distribution (including by way of a reduction in share capital and distribution of any distributable reserve and share premium or the payment of a cash Dividend from Reserves), other than a cash Distribution as referred to in Condition 6(b)(v) below, the Issuer shall issue or distribute to holders of its Ordinary Shares any assets, evidence of indebtedness of the Issuer, shares, put options or other rights per Ordinary Share (other than as referred to in Condition 6(b)(ii) above) (a **Distribution**), the Conversion Price shall be adjusted as follows:

(A) where the Distribution (x) consists of securities that are traded on a regulated stock exchange in Switzerland, the European Union, the United States of America, Canada or Japan or (y) has otherwise a value which is determinable by reference to a stock exchange quotation or otherwise, by multiplying the Conversion Price in force immediately prior to such issue or distribution by the result of the following formula:

$$(P_{\text{cum}} - D) / P_{\text{cum}}$$

where:

$P_{\text{cum}}$  is the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to the date on which the Ordinary Shares are first traded ex-Distribution on the Relevant Stock Exchange following the relevant Distribution; and

D is the value of the Distribution (in euro) attributable to one Ordinary Share on the Trading Day immediately following the date in respect of which  $P_{\text{cum}}$  has been determined, as determined by an Independent Financial Adviser based, in principle, on the closing price on the Relevant Stock

Exchange in case of 6(b)(iv)(A)(x) or by an Independent Financial Adviser in case of 6(b)(iv)(A)(y);

- (B) in all other cases and where there is one (but not more than one) Distribution on a given Trading Day, by multiplying the Conversion Price in force immediately prior to such Distribution by the result of the following formula:

$$P_{\text{after}} / P_{\text{before}}$$

where:

$P_{\text{after}}$  is the Current Market Price per Ordinary Share after the date such Distribution was made (the **Distribution Date**); and

$P_{\text{before}}$  is the Current Market Price per Ordinary Share before the Distribution Date;

whereby for the purposes of these Conditions (but other than in respect of this provision) the Current Market Price per Ordinary Share in respect of any Trading Day shall be deemed to be the average of the Closing Prices on each of the 5 (five) consecutive Trading Days ending on the Trading Day immediately preceding such Trading Day and, for the purposes of this provision only, the Current Market Price per Ordinary Share shall be deemed to be the average of the Closing Prices (x) in the case of  $P_{\text{before}}$ , on the 5 (five) consecutive Trading Days before the Distribution Date, and (y) in the case of  $P_{\text{after}}$ , on the 5 (five) consecutive Trading Days after the Distribution Date, as determined by an Independent Financial Adviser.

When calculating the average of the Closing Prices, the gross amount, if any, of any cash Distribution paid during either of the above mentioned periods of 5 (five) consecutive Trading Days, shall be added back to the Closing Prices on each of the Trading Days on which the Ordinary Shares are traded ex-cash Distribution; and

- (C) in all other cases where there is more than one such Distribution on a given Trading Day, the Independent Financial Adviser will determine the necessary adjustment.

Such adjustment shall become effective, in the case of (A), on the date on which the Distribution is made and, in the case of (B) and (C), 5 (five) Trading Days after the Distribution Date.

In these Conditions “cash Dividend from Reserves” shall mean the excess, if any, of the aggregate amount of cash dividends paid in

respect of a fiscal year of the Issuer above the distributable profits of the Issuer for such fiscal year.

(v) *Extraordinary Distributions:*

Subject to Condition 6(e), in the event of an Extraordinary Distribution paid after 6 October 2009 other than a cash Dividend from Reserves by the Issuer to holders of its Ordinary Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price by the following fraction:

$$(P_{\text{cum}} - D) / P_{\text{cum}}$$

where:

- $P_{\text{cum}}$  is the Closing Price on the Trading Day immediately preceding the date on which the Ordinary Shares are first traded ex-Distribution;
- D is the portion of the Fair Market Value of the Extraordinary Distribution attributable to one Ordinary Share (as adjusted for any split or consolidation of the Ordinary Shares pursuant to Condition 6(b)(i)) paid in the Relevant Fiscal Year (as defined below).

Such adjustment shall become effective on the Trading Day on which the Ordinary Shares are first traded ex-Distribution.

**Extraordinary Distribution** means any cash Distribution (including any repayments in part of the nominal amount of the Ordinary Shares but not including any distributions for which an adjustment is otherwise made according to Condition 6(b) or 6(d) or is excluded in accordance with Condition 6(e)) (the **Relevant Distribution**) paid in (i) the calendar year 2009, on any date falling after 6 October 2009, whatever the size of such cash Distribution and without reference to the Fair Market Value of such cash Distribution per Ordinary Share exceeding alone, or in aggregate with any other cash Distributions, a Threshold Amount and (ii) any other calendar year referenced below (the **Relevant Fiscal Year**) if the sum of:

- (a) the Fair Market Value of the Relevant Distribution per Ordinary Share; and
- (b) the aggregate of the Fair Market Value per Ordinary Share of any other cash Distribution or cash Distributions per Ordinary Share paid in the Relevant Fiscal Year (disregarding for such purpose any amount previously determined to be an Extraordinary Distribution in the Relevant Fiscal Year).

such sum being the Current Year's Dividends, exceeds the Threshold Amount for such Relevant Fiscal Year, and in such case the amount of the relevant Extraordinary Distribution shall be the lesser of (A) the amount by which the Current Year's Dividends exceeds the Threshold Amount and (B) the amount of the Relevant Distribution.

**Threshold Amount** means, for any Relevant Fiscal Year, the amount per Ordinary Share corresponding to the fiscal year set out below (adjusted *pro rata* for any adjustments to the Conversion Price made pursuant to the provisions of this Condition 6(b)).

	Threshold Amount (€)
Relevant Fiscal Year ending:	
31 December 2009.....	1.20
31 December 2010.....	1.20
31 December 2011.....	1.20
31 December 2012.....	1.20
31 December 2013.....	1.20
31 December 2014.....	1.20

(c) *Calculation of Adjustments*

Each adjustment to be made pursuant to Condition 6(b) or Condition 7(c) shall be determined by an Independent Financial Adviser appointed by the Issuer and shall (in the absence of manifest error) be binding on all parties concerned. In addition, any written opinion of the Independent Financial Adviser, where required by Condition 6(b), shall be conclusive and binding on all concerned save in the case of manifest error.

If in case of any adjustment the resulting Conversion Price is not an integral multiple of euro 0.01 (one hundredth of a euro), it shall be rounded down to the nearest whole or multiple of euro 0.01 (one hundredth of a euro). No adjustment shall be made to the Conversion Price where such adjustment (rounded down, if applicable) would be less than €0.01 (one hundredth of a euro) Any adjustment not required to be made, and/or any amount by which the Conversion Price has been rounded down, shall be carried forward and taken into account in any subsequent adjustment, and such subsequent adjustment shall be made on the basis that the adjustment not required to be made had been made at the relevant time.

The Issuer will procure that a notice is published in the manner described in Condition 15 as soon as practicable after either the date on which any adjustment to the Conversion Price becomes effective or, if no adjustment is required, the date on which it is possible to determine that such is the case.

(d) *Retroactive Adjustments*

If the Share Record Date in relation to the conversion of any Note shall be after an adjustment event specified in Condition 6(b), in any case in circumstances where the relevant Conversion Date falls before the relevant adjustment becomes effective under Condition 6(b) (such adjustment, a **Retroactive Adjustment**), then the Issuer shall (conditional upon the relevant adjustment becoming effective) procure that there shall be issued or delivered to the converting Noteholder, in accordance with the instructions contained in the Conversion Notice, such additional number of Ordinary Shares (if any) (the **Additional Ordinary Shares**) as, together with the Ordinary Shares issued or to be issued or delivered on conversion of the relevant Note (together with any fraction of an Ordinary Share not so issued), is equal to the number of Ordinary Shares which would have been required to be issued or delivered on conversion of such Note if the relevant adjustment (more particularly referred to in the said provisions of Condition 6(b), Condition 6(f) or Condition 7(c)) to the Conversion Price had in fact been made and become effective immediately prior to the relevant Conversion Date.



(e) *Events not Giving Rise to Adjustments*

No adjustment to the Conversion Price will be made:

- (i) if the Issuer sells any share, right, warrant or other securities representing the same (an **Interest**) in any of its Subsidiaries to Shareholders at fair value, and for this purpose:
  - (I) where such Interest is listed, traded, or dealt in on any stock exchange, the fair value of such Interest shall be at least 95% of the arithmetic average of the Closing Prices of one Ordinary Share on the 5 (five) consecutive Trading Days ending immediately prior to the day on which the Issuer officially announces the terms and conditions for such sale, as determined by an Independent Financial Adviser;
  - (II) where such Interest is not so listed, traded or dealt in, the fair value of such Interest shall be at least 95% of the intrinsic value thereof. The Issuer shall, at its own expense, instruct an Independent Financial Adviser to determine as soon as practicable the intrinsic value of such Interest; or
- (ii) if Ordinary Shares or Other Securities (including pre-emptive rights, options or warrants in relation to Ordinary Shares or Other Securities) are issued, offered or granted to, or for the benefit of, directors or employees, or former directors or employees or consultants or former consultants of the Issuer or any of its Subsidiaries or any associated company or to trustees to be held for the benefit of any such person in any such case pursuant to any employee share or option scheme; or
- (iii) if an increase in the Conversion Price would result from such adjustment, except in the case of an exchange of the Ordinary Shares for Other Securities or a consolidation of Ordinary Shares; or
- (iv) without prejudice to Condition 11, if the Conversion Price would fall below the nominal value of an Ordinary Share. In this case, the Conversion Price will be adjusted to the nominal value of an Ordinary Share and any remaining reduction of the Conversion Price resulting from such adjustment or from any further adjustment will be carried forward and only be applied if and to the extent the nominal value of an Ordinary Share will be reduced.

(f) *Other Events*

If the Issuer determines, at its discretion, that notwithstanding Condition 6(b) and Condition 6(d) an adjustment should be made to the Conversion Price as a result of one or more events or circumstances not referred to in Condition 6(b) or circumstances including circumstances listed in Condition 6(d) have arisen which have an adverse effect on the right to convert Notes and no adjustment to the Conversion Price under Condition 6(b) would otherwise arise or is excluded according to Condition 6(e), the Issuer shall engage the advice or services of an Independent Financial Adviser to determine as soon as practicable what adjustment, if any, to the Conversion Price or amendment, if any, to the terms of this Condition 6 is fair and reasonable to take account thereof and the date on which such adjustment should take effect. If several events occur which become effective on the same Trading Day and which would lead to an adjustment of the Conversion Price pursuant to Condition 6(b), the decision as to the manner of or calculating the adjustment of the Conversion Price shall be taken by the Independent Financial Adviser. The decision of the Independent Financial Adviser shall be binding on all concerned, save in the case of manifest error. The Fiscal Agent shall have no responsibility to make any inquiries as to whether or not any event has

occurred which might require an adjustment to the Conversion Price or amendment, if any, to the terms of Condition 6.

(g) *Procedure for exercise of Conversion Rights*

The Conversion Right may be exercised by a Noteholder during the Conversion Period by delivering the relevant Note to the specified office of any Paying, Transfer and Conversion Agent, during its usual business hours, accompanied by a duly completed and signed notice of conversion (a **Conversion Notice**) in the form (for the time being current) obtainable from any Paying, Transfer and Conversion Agent. Conversion Rights shall be exercised subject in each case to any applicable fiscal or other laws or regulations applicable in the jurisdiction in which the specified office of the Paying, Transfer and Conversion Agent to whom the relevant Conversion Notice is delivered is located. If such delivery is made after the end of normal business hours or on a day which is not a business day in the place of the specified office of the relevant Paying, Transfer and Conversion Agent, such delivery shall be deemed for all purposes of these Conditions to have been made on the next following such business day.

A Conversion Notice, once delivered, shall be irrevocable.

The conversion date in respect of a Note (the **Conversion Date**) shall be the Madrid/Barcelona business day immediately following the date of the delivery of the Notes and the Conversion Notice and, if applicable, the making of any payment to be made as provided below.

A Noteholder exercising a Conversion Right must pay directly to the relevant authorities any taxes and capital, stamp, issue and registration duties arising on conversion (other than any taxes or capital duties or stamp duties payable in the United Kingdom, Luxembourg, Belgium or the Kingdom of Spain in respect of the allotment and issue and/or transfer of any Ordinary Shares on such conversion (including any Additional Ordinary Shares), which shall be paid by the Issuer) and such Noteholder must pay all, if any, taxes arising by reference to any disposal or deemed disposal of a Note or interest therein in connection with such conversion.

The Issuer may, in its own discretion, decide to fulfil its obligations, in connection with any Conversion Notice received, by the transfer of existing Ordinary Shares or, if the New Issue Requirements have been met, the allotment and issue of new Ordinary Shares provided that the Issuer shall treat all Noteholders converting their Notes on the same Conversion Date equally.

For the purposes of these Conditions, **New Issue Requirements** shall comprise the approval by the Issuer's shareholders' meeting of a resolution authorising the Issuer to satisfy the exercise of Conversion Rights by the issue and allotment of new Ordinary Shares and the registration with the relevant Mercantile Registry of such resolution. The Issuer undertakes to give notice promptly to Noteholders (in accordance with Condition 15) of the New Issue Requirements having been met.

Subject as provided in the immediately following paragraph, Conversion Notices will be acted upon by the Issuer on the first day of each calendar month or, if such day is not a Madrid/Barcelona business day, the following Madrid/Barcelona business day, in relation to Conversion Notices in respect of which the Conversion Dates occurred at least 7 (seven) Madrid/Barcelona business days prior to such day. Any Conversion Notice in respect of which the Conversion Date falls after the seventh Madrid/Barcelona business day prior to the first day of the relevant calendar month or if such day is not a

Madrid/Barcelona business day, the following Madrid/Barcelona business day, will be acted upon on the first day of the immediately following calendar month or if such day is not a Madrid/Barcelona business day, the following Madrid/Barcelona business day.

Notwithstanding the provisions of the preceding paragraph, (a) in the case of Conversion Notices delivered in respect of which the Conversion Date falls on any date during December 2009 or January 2010, the Issuer shall act upon any such Conversion Notice on the tenth day of February 2010 or, if such day is not a Madrid/Barcelona business day, the following Madrid/Barcelona business day, and (b) in the case of Conversion Notices delivered in respect of which the Conversion Date falls after the seventh Madrid/Barcelona business day prior to the last calendar month immediately prior to the Final Maturity Date or the last day of the Triggering Event Period (as the case may be), the Issuer shall act upon any such Conversion Notice not later than the Madrid/Barcelona business day prior to the Final Maturity Date or the last day of the Triggering Event Period (as the case may be).

The date upon which the Board of Directors of the Issuer, the Executive Committee (*Comisión Ejecutiva*) of the Issuer or any member of any of them acts upon the relevant Conversion Notice will be the date upon which the Notes are converted into Ordinary Shares and shall be the date from which the relevant Noteholder shall be without prejudice to Condition 6(a)(ii) in relation to Issuer Conversion Rights entitled to the economic rights of a holder of Ordinary Shares and is referred to herein as the **Share Record Date**. On the Share Record Date, subject to the next following sentence, and without prejudice to Condition 6(a)(ii), the relevant Noteholder will become entitled to the economic rights of a Shareholder for the purposes of dividend entitlement and otherwise. However, the relevant Noteholder will not be able to transfer newly-issued Ordinary Shares until they have been registered in Iberclear or existing Ordinary Shares until they have been credited to the account of the relevant Noteholder or its nominee with Iberclear. The date that the newly-issued Ordinary Shares are registered in, or existing Ordinary Shares are credited to, Iberclear, is referred to herein as the **Registry Date**.

The Issuer shall use its reasonable endeavours to register newly-issued Ordinary Shares and have these Ordinary Shares listed on the Spanish Stock Exchanges or credit existing Ordinary Shares (as applicable) in Iberclear as soon as practicable but in no event later than 15 (fifteen) Trading Days, in the case of new Ordinary Shares, and 5 (five) Trading Days, in the case of existing Ordinary Shares, after the relevant Share Record Date.

*The Registry Date for existing Ordinary Shares and for newly-issued Ordinary Shares is generally expected to occur between one and two weeks after the relevant Share Record Date.*

On or as soon as reasonably practicable after the Share Record Date with respect to any Notes in respect of which the Conversion Right has been exercised, the Issuer, through the Fiscal Agent, will notify the relevant Noteholder of the Share Record Date and the number of existing Ordinary Shares and/or newly-issued Ordinary Shares (as the case may be) to be transferred and/or issued upon such conversion. On or as soon as reasonably practicable after the Registry Date, the Issuer, through the Fiscal Agent, will notify the relevant Noteholder of the Registry Date and in the event that any newly-issued Ordinary Shares are issued, the Issuer will also notify the relevant Noteholder of the date of listing. In the relevant Conversion Notice the Noteholder is required to designate, *inter alia*, details of the Iberclear account and the name or names in which

the newly-issued Ordinary Shares shall be issued and registered (or in the case of existing Ordinary Shares, credited).

Notwithstanding delivery by a Noteholder of a Conversion Notice with respect to any Notes, such Noteholder shall remain a Noteholder for the purposes of and subject to these Conditions until the relevant Share Record Date, provided that once Conversion Rights with respect to a Note have been exercised, such Note will not be redeemable, subject to this Condition 6(g), on the Final Maturity Date or otherwise.

(h) *Ordinary Shares*

- (i) Without prejudice to Condition 6(a)(ii), Ordinary Shares delivered or issued upon conversion of the Notes will be fully paid and will in all respects rank *pari passu* with the fully paid Ordinary Shares in issue on the relevant Share Record Date or, in the case of Additional Ordinary Shares, on the relevant Reference Date, except that such Ordinary Shares or, as the case may be, Additional Ordinary Shares will not rank for any rights, distributions or payments the record date or other due date for the establishment of entitlement for which falls prior to the relevant Share Record Date or, as the case may be, the relevant date upon which any retroactive adjustment under Condition 6(d) becomes effective (the **Reference Date**).
- (ii) No payment or adjustment shall be made on conversion for any interest which otherwise would have accrued on the relevant Notes since the last Interest Payment Date preceding the Conversion Date relating to such Notes (or, if such Conversion Date falls before the first Interest Payment Date, since the Closing Date).

(i) *Purchase or Redemption of Ordinary Shares*

The Issuer may exercise such rights as it may from time to time enjoy to purchase or redeem or buy back its own shares (including Ordinary Shares) or any depositary or other receipts representing the same without the consent of the Noteholders.

(j) *Consolidation, Amalgamation or Merger*

Without prejudice to Condition 7(c), in the case of any consolidation, amalgamation or merger of the Issuer with any other corporation (other than a consolidation, amalgamation or merger in which the Issuer is the continuing corporation), or in the case of any sale or transfer of all, or substantially all, of the assets of the Issuer, the Issuer will forthwith notify the Noteholders of such event and take such steps as shall be required to ensure that each Note then outstanding will (during the period in which Conversion Rights may be exercised) be converted into the class and amount of shares and other securities property and cash receivable upon such consolidation, amalgamation, merger, sale or transfer by a holder of the number of Ordinary Shares which would have become liable to be issued or delivered if the Conversion Rights had been exercised immediately prior to such consolidation, amalgamation, merger, sale or transfer. The above provisions of this Condition 6(j) will apply, *mutatis mutandis* to any subsequent consolidations, amalgamations, mergers, sales or transfers.

## **7 Redemption, Purchase and Triggering Event Protections**

(a) *Final Redemption*

Unless previously purchased and cancelled, redeemed or converted as herein provided, the Notes will be redeemed at their principal amount on the Final Maturity Date.

(b) *Redemption at the option of Noteholders following a Triggering Event*

From the Subordination End Date if a Triggering Event shall occur, the holder of each Note will have the right to require the Issuer to redeem that Note on the Put Date at the Put Price, together with accrued interest to (but excluding) the Put Date.

To exercise the right set out in the previous paragraph, the holder of the relevant Note must present such Note at the specified office of any Paying, Transfer and Conversion Agent together with a duly completed and signed notice of exercise, in the form for the time being current, obtainable from the specified office of any Paying, Transfer and Conversion Agent (a **Put Exercise Notice**) at any time in the period (the **Put Period**) of 60 days commencing on the occurrence of the Triggering Event (as defined below) and ending 60 days thereafter, or, if later, 60 days following the date upon which notice as required by Condition 7(d) is given to Noteholders by the Issuer. The **Put Date** shall be, the fourteenth calendar day after the expiry of the Put Period.

Payment in respect of any such Note shall be made by transfer to a bank in a city in which banks have access to the TARGET System specified by the relevant Noteholder in the applicable Put Exercise Notice.

In these Conditions:

**CNMV** means Spain's Comisión Nacional del Mercado de Valores.

**Put Price** means, in respect of a Note, the principal amount of such Note.

**Relevant Person** means B 1998, S.L. and/or any person or persons controlled by B 1998, S.L.

A **Relevant Person Triggering Event** shall occur if a Relevant Person and/or any person or persons acting together with a Relevant Person acquires or becomes entitled to control more than 75% of the Voting Rights of the Issuer.

**Tender Offer** means a tender offer (including a competing tender offer) made in accordance with applicable Spanish laws and regulations following publication of its approval from the CNMV.

**Tender Offer Period** means the period during which Shareholders are able to tender Ordinary Shares pursuant to the relevant Tender Offer.

A **Tender Offer Triggering Event** shall occur where a Tender Offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) such Shareholders other than the offeror and/or any person or persons acting together with the offeror) to acquire all or any of the issued Ordinary Share capital of the Issuer and which would result, immediately following completion of the Tender Offer, in the offeror having control of the Issuer, where for this purpose "control" means (a) the acquisition or holding of legal or beneficial ownership or control of more than 50% of the Voting Rights of the Issuer or (b) the right to appoint and/or remove all or the majority of the members of the Issuer's Board of Directors or other governing body, whether obtained directly or indirectly and whether obtained by ownership of share capital, the possession of Voting Rights, contract or otherwise.

**Triggering Event** means a Relevant Person Triggering Event or a Tender Offer Triggering Event, as the case may be.

(c) *Conversion Price and Protection in relation to a Triggering Event*

If a Triggering Event shall occur, the Conversion Price shall be adjusted in accordance with the formula set out below, provided that any adjustment to the Conversion Price pursuant to this Condition 7(e) shall apply only to Notes in respect of which Conversion Rights are exercised and the relevant Conversion Date falls within the period (the **Triggering Event Period**) commencing on and including the date the relevant Triggering Event occurs and ending on and including the date falling (a) 60 (sixty) days thereafter or, if later, 60 (sixty) days after the date on which notice of the Relevant Person Triggering Event is given to Noteholders, or (b) the last date upon which the Tender Offer is open for acceptance:

Conversion Price =  $RP \times (1 + (CP \times (1 - c/t)))$  where:

- RP is the Conversion Price prevailing on the relevant Conversion Date, divided by  $(1 + CP)$ ;
- CP is 28% (expressed as a fraction);
- c is the number of days from and including the first day when the adjusted Conversion Price is applicable to but excluding the Final Maturity Date, calculated on an Act/Act ICMA basis; and
- t is the number of days from and including the Closing Date to but excluding the Final Maturity Date, calculated on an Act/Act ICMA basis.

(d) *Notice of Triggering Event*

Within 14 (fourteen) calendar days following the occurrence of a Triggering Event, the Issuer shall give notice thereof to the Noteholders in accordance with Condition 15. Such notice shall contain a statement informing Noteholders of their entitlement to exercise their Conversion Rights as provided in these Conditions, and (if applicable) to exercise their rights to require redemption of their Notes pursuant to Condition 7(b).

Such notice shall also specify:

- (a) all information material to Noteholders concerning the Triggering Event;
- (b) the Conversion Price immediately prior to the occurrence of the Triggering Event and the Conversion Price applicable pursuant to Condition 7(c) during the Triggering Event Period on the basis of the Conversion Price in effect on the date the Triggering Event occurs;
- (c) the Closing Price of the Ordinary Shares as derived from the Relevant Stock Exchange as at the latest practicable date prior to the publication of the relevant notice;
- (d) the Triggering Event Period and (if applicable) the last day of the Put Period; and
- (e) the Put Date.

A Put Exercise Notice, once delivered, shall be irrevocable and the Issuer shall redeem all Notes the subject of Put Exercise Notices delivered as aforesaid on the relevant Put Date.

(e) *Purchase*

Subject to the requirements (if any) of any stock exchange on which the Notes may be admitted to listing and trading at the relevant time and subject to compliance with applicable laws and regulations, the Issuer or any Subsidiary of the Issuer may at any

time after the Subordination End Date purchase Notes in the open market or otherwise at any price. Such Notes shall be surrendered to the Fiscal Agent for cancellation.

(f) *Cancellation*

All Notes which are redeemed or in respect of which Conversion Rights are exercised will be cancelled and may not be reissued or resold.

(g) *Multiple Notices*

If more than one notice of redemption is given pursuant to this Condition 7, the first of such notices to be given shall prevail.

## 8 **Payments**

(a) *Principal and Premium*

Payment of principal and premium in respect of the Notes and accrued interest payable on a redemption of the Notes (other than on an Interest Payment Date) will be made to the persons shown in the Register at the close of business on the Record Date and subject to the surrender (or, in the case of partial payment only, endorsement) of the relevant Notes at the specified office of the Registrar or of any of the Paying, Transfer and Conversion Agents.

(b) *Interest and other Amounts*

(i) Payments of interest due on an Interest Payment Date will be made to the persons shown in the Register at close of business on the Record Date.

(ii) Payments of all amounts other than as provided in Condition 8(a) and 8(b)(i) will be made as provided in these Conditions.

(c) *Record Date*

**Record Date** means the seventh business day, in the place of the specified office of the Registrar, before the due date for the relevant payment.

(d) *Payments*

Each payment in respect of the Notes pursuant to Condition 8(a) and 8(b)(i) will be made by transfer to a euro account maintained by the payee with a bank in a city in which banks have access to the TARGET System.

(e) *Payments subject to fiscal laws*

Without prejudice to the application of the provisions of Condition 9, all payments in respect of the Notes are subject in all cases to any applicable fiscal or other laws and regulations. No commissions or expenses shall be charged to the Noteholders in respect of such payments.

(f) *Delay in payment*

Noteholders will not be entitled to any interest or other payment for any delay after the due date in receiving the amount due (a) as a result of the due date not being a business day or (b) if the Noteholder is late in surrendering the relevant Note (where such surrender is required pursuant to these Conditions as a precondition to any payment).

(g) *Business Days*

In this Condition, **business day** means a day (other than a Saturday or Sunday) which is a TARGET Business Day and in the case of presentation or surrender of a Note on which commercial bank and foreign exchange markets are open for business in the place of the specified office of the Registrar or relevant Paying, Transfer and Conversion Agent, to whom the relevant Note is presented or surrendered.

(h) *Paying, Transfer and Conversion Agents, etc.*

The initial Paying, Transfer and Conversion Agents and Registrar and their initial specified offices are listed below. The Issuer reserves the right under the Fiscal Agency Agreement at any time to vary or terminate the appointment of any Paying, Transfer and Conversion Agent or the Registrar and appoint additional or other Fiscal Agents, provided that it will (a) maintain a Fiscal Agent, (b) maintain Paying, Transfer and Conversion Agents having specified offices in at least two major European cities, (c) maintain a Paying, Transfer and Conversion Agent with a specified office in a European Union member state that will not be obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC on the taxation of savings income or any law implementing or complying with, or introduced in order to conform to, such Directive and (d) maintain a Registrar with a specified office outside the United Kingdom. Notice of any change in the Paying, Transfer and Conversion Agents or the Registrar or their specified offices will promptly be given by the Issuer to the Noteholders in accordance with Condition 15. In addition, at any time when a determination is required to be made by an Independent Financial Adviser, the Issuer shall promptly appoint and maintain such an Independent Financial Adviser.

(i) *Fractions*

When making payments to Noteholders, if the relevant payment is not of an amount which is a whole multiple of the smallest unit of the relevant currency in which such payment is to be made, such payment will be rounded down to the nearest unit.

## 9 Taxation

All payments in respect of the Notes by or on behalf of the Issuer shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature, unless such withholding or deduction is required by applicable laws or regulations. If any such withholding or deduction is so required, the relevant payment shall be made subject to and after any such withholding or deduction and no additional amounts shall be payable by the Issuer in respect of any such withholding or deduction.

## 10 Events of Default

If any of the following events (each an **Event of Default**) shall have occurred and is continuing:

- (a) default is made in the payment on the due date of principal, premium or interest or any other amount in respect of any of the Notes and such failure continues for a period of 5 (five) days in the case of principal or premium and 7 (seven) days in the case of interest; or
- (b) the Issuer does not perform or comply with any one or more of its other obligations in respect of the Notes, which default is incapable of remedy or, is not remedied within 30 (thirty) days after written notice of such default shall have been given to the Fiscal Agent at its specified office by any Noteholder; or



- (c)
- (i) any other present or future indebtedness for or in respect of moneys borrowed or raised of the Issuer or any Material Subsidiary becomes, or is declared, due and payable prior to its stated maturity otherwise than at the option of the Issuer or the relevant Material Subsidiary; or
  - (ii) any such indebtedness for or in respect of moneys borrowed or raised is not paid when due or, as the case may be, within any applicable grace period; or
  - (iii) the Issuer or any Material Subsidiary fails to pay when due any amount payable by it under any present or future guarantee for, or indemnity in respect of, any indebtedness for or in respect of moneys borrowed or raised,

provided that the aggregate amount of the indebtedness, guarantees or indemnities in respect of which one or more of the events mentioned above in this paragraph (c) have occurred equals or exceeds €100,000,000 or its equivalent; or

- (d) a distress, attachment, execution or other legal process is levied, enforced or sued out on or against any part of the property, assets or revenues of the Issuer or any Material Subsidiary and is not discharged or stayed within 30 (thirty) days provided that the aggregate amount of property, assets and/or revenues involved in any such distress, attachment, execution or legal process equals or exceeds €100,000,000 or its equivalent; or
- (e) any mortgage, charge, pledge, lien or other encumbrance, present or future, created or assumed by the Issuer or any Material Subsidiary in respect of an obligation the principal amount of which equals or exceeds €100,000,000 or its equivalent is enforced (including by the taking of possession or the appointment of a receiver, administrative receiver, administrator manager or other similar person); or
- (f) the Issuer or any Material Subsidiary is insolvent or bankrupt (*concurso*) or unable to pay its debts, or is declared or a voluntary request has been submitted to a relevant court for the declaration of insolvency or bankruptcy, stops, suspends or threatens to stop or suspend payment of all or a material part of its debts, proposes or makes any agreement for the deferral, rescheduling or other readjustment of all of its debts, proposes or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors in respect of any of such debts or a moratorium is agreed or declared or comes into effect in respect of or affecting all or any part of the debts of the Issuer or any Material Subsidiary; or
- (g) an order is made or an effective resolution passed for the winding-up (*liquidación*) or dissolution (*disolución*) of any Material Subsidiary, or the Issuer or any Material Subsidiary ceases or threatens to cease to carry on all or substantially all of its business or operations, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation (i) on terms approved by a resolution of the Syndicate of Noteholders; or (ii) in the case of a Material Subsidiary, whereby the undertaking and assets of the Material Subsidiary are transferred to or otherwise vested in the Issuer or another Material Subsidiary; or
- (h) any action, condition or thing (including the obtaining or effecting of any necessary consent, approval, authorisation, exemption, filing, licence, order, recording or registration) at any time required to be taken, fulfilled or done in order (i) to enable the Issuer lawfully to enter into, exercise its rights and perform and comply with its obligations under the Notes; (ii) to ensure that those obligations are legally binding and enforceable; and (iii) to make the Notes admissible in evidence is not taken, fulfilled or done; or

- (i) any event occurs which under the laws of any relevant jurisdiction has a similar effect to any of the events referred to in any of the foregoing paragraphs; or
- (j) it is or will become unlawful for the Issuer to perform or comply with any of its obligations under or in respect of the Notes,

then, (A) up to and including the Subordination End Date, any Note may, by notice in writing given to the Fiscal Agent at its specified office by (i) the Commissioner acting upon a resolution of the Syndicate of Noteholders, in respect of all Notes, or (ii) unless there has been a resolution to the contrary by the Syndicate of Noteholders, any Noteholder in respect of such Note, be placed on demand, whereupon, subject as provided for in Condition 1(c) (Status of the Notes and Subordination), they shall become immediately payable on demand by the Commissioner or Noteholders as the case may be and (B) following the Subordination End Date, any Note may, by notice in writing to the Fiscal Agent at its specified office by (i) the Commissioner acting upon a Resolution of Noteholders, in respect of all Notes, or (ii) unless there has been a resolution to the contrary by the Syndicate of Noteholders, any Noteholder in respect of such Note, be declared immediately due and payable whereupon it shall become immediately due and payable at its principal amount together with accrued interest, without further formality.

## **11 Undertakings**

Whilst any Conversion Right remains exercisable, the Issuer will, save with the approval of a resolution of the Syndicate of Noteholders:

- (a) not issue or pay up any Securities, in either case by way of capitalisation of profits or reserves, other than:
  - (i) by the issue of fully paid Ordinary Shares to Shareholders and other holders of shares in the capital of the Issuer which by their terms entitle the holders thereof to receive Ordinary Shares or other shares or securities on a capitalisation of profits or reserves; or
  - (ii) by the issue of Ordinary Shares paid up in full (in accordance with applicable law) and issued wholly, ignoring fractional entitlements, in lieu of the whole or part of a cash dividend; or
  - (iii) by the issue of fully paid equity share capital (other than Ordinary Shares) to the holders of equity share capital of the same class and other holders of shares in the capital of the Issuer which by their terms entitle the holders thereof to receive equity share capital (other than Ordinary Shares); or
  - (iv) by the issue of Ordinary Shares or any equity share capital to, or for the benefit of, any employee or former employee, director or executive holding or formerly holding executive office of the Issuer or any of its Subsidiaries or any associated company or to trustees or nominees to be held for the benefit of any such person, in any such case pursuant to an employee, director or executive share or option scheme whether for all employees, directors, or executives or any one or more of them,

unless, in any such case, the same constitutes a Distribution or otherwise gives rise (or would, but for the provisions of Condition 6(c) relating to roundings or the carry forward of adjustments, give rise) to an adjustment to the Conversion Price;

- (b) not in any way modify the rights attaching to the Ordinary Shares with respect to voting, dividends or liquidation nor issue any other class of equity share capital carrying any rights

which are more favourable than the rights attaching to the Ordinary Shares but so that nothing in this Condition 11(b) shall prevent:

- (i) any consolidation, reclassification or subdivision of the Ordinary Shares; or
  - (ii) any issue of Ordinary Shares or any equity share capital to, or for the benefit of, any employee or former employee, director or executive holding or formerly holding executive office of the Issuer or any of its Subsidiaries or any associated company or to trustees or nominees to be held for the benefit of any such person, in any such case pursuant to an employee, director or executive share or option scheme whether for all employees, directors, or executives or any or more of them; or
  - (iii) any modification of such rights which is not, in the opinion of an Independent Financial Adviser (acting as an expert), materially prejudicial to the interests of the holders of the Notes; or
  - (iv) any issue of equity share capital where the issue of such equity share capital results, or would, but for the fact that the consideration per Ordinary Share receivable therefore is at least 95% of the Current Market Price per Ordinary Share, otherwise result, in an adjustment to the Conversion Price; or
  - (v) any issue of equity share capital or modification of rights attaching to the Ordinary Shares, where prior thereto the Issuer shall have instructed an Independent Financial Adviser to determine what (if any) adjustments should be made to the Conversion Price as being fair and reasonable to take account thereof and such Independent Financial Adviser shall have determined either that no adjustment is required or that an adjustment resulting in an increase in the Conversion Price is required and, if so, the new Conversion Price as a result thereof and the basis upon which such adjustment is to be made and, in any such case, the date on which the adjustment shall take effect (and so that the adjustment shall be made and shall take effect accordingly);
- (c) procure that no Securities (whether issued by the Issuer or any Subsidiary of the Issuer or procured by the Issuer or any Subsidiary of the Issuer to be issued or issued by any other person pursuant to any arrangement with the Issuer or any Subsidiary of the Issuer) issued without rights to convert into, or subscribe for, Ordinary Shares shall subsequently be granted such rights exercisable at a consideration per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share at the close of business on the last Trading Day preceding the date of the first public announcement of the proposed inclusion of such rights unless the same gives rise to an adjustment to the Conversion Price and that at no time shall there be in issue Ordinary Shares of differing nominal values, save where such Ordinary Shares have the same economic rights;
- (d) not make any issue, grant or distribution or any other action taken if the effect thereof would be that, on the exercise of Conversion Rights, Ordinary Shares could not, under any applicable law then in effect, be legally issued as fully paid;
- (e) not reduce its issued share capital, share premium (*prima de emisión de acciones*) account or capital redemption reserve (*reserva por capital amortizado*) or any uncalled liability in respect thereof, or any non-distributable reserves, except:
- (i) pursuant to the terms of issue of the relevant share capital; or
  - (ii) a reduction of share premium (*prima de emisión de acciones*) account or capital redemption reserve to facilitate the writing off of goodwill arising on consolidation which does not involve the return, either directly or indirectly, of an amount standing to the credit of the share premium (*prima de emisión acciones*) account or capital

redemption reserve (reserva por capital amortizado) of the Issuer and in respect of which the Issuer shall have tendered to the court of competent jurisdiction such undertaking as it may require (if any) limiting, so long as any of the Notes remains outstanding, the extent of any distribution (except by way of capitalisation issue) of any reserve which arise in the books of the Issuer as a result of such reduction; or

- (iii) as permitted under applicable law and whether by way of transfer to reserves or otherwise, as long as no Distribution is made to Shareholders; or
  - (iv) where the reduction is the result of the cancellation of treasury Ordinary Shares (*autocartera*); or
  - (v) where the reduction is permitted by applicable law and either it results in an adjustment to the Conversion Price or the Independent Financial Adviser (acting as expert) advises that the interests of the Noteholders will not be materially prejudiced,
  - (vi) provided that, without prejudice to the other provisions of these Conditions, the Issuer may exercise such rights as they may from time to time enjoy pursuant to applicable law to purchase its Ordinary Shares and any depositary or other receipts or certificates representing Ordinary Shares without the consent of Noteholders;
- (f) if any offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) Shareholders other than the offeror and/or any associate (or affiliate) of the offeror) to acquire the whole or any part of the issued Ordinary Shares, or if any person proposes a scheme with regard to such acquisition, give notice of such offer or scheme to the Noteholders at the same time as any notice thereof is sent to the Shareholders (or as soon as practicable thereafter) that details concerning such offer or scheme may be obtained from the specified offices of the Paying, Transfer and Conversion Agents and, where such an offer or scheme has been recommended by the board of directors of the Issuer, or where such an offer has become or been declared unconditional in all respects, use all reasonable endeavours to procure that a like offer is extended to the holders of any Ordinary Shares issued during the period of the offer arising out of the exercise of the Conversion Rights by the Noteholders;
- (g) use its reasonable endeavours to ensure that (i) its issued and outstanding Ordinary Shares shall be admitted to listing and to trading on the Relevant Stock Exchange, (ii) the Ordinary Shares issued upon exercise of Conversion Rights will, as soon as is practicable, be admitted to listing and to trading on the Relevant Stock Exchange and will be listed, quoted or dealt in, as soon as is practicable, on any other stock exchange or securities market on which the Ordinary Shares may then be listed or quoted or dealt in and comply with such requirements and conditions as may be imposed by the managing companies of the Spanish Stock Exchanges (*Sociedades Rectoras de las Bolsas*) or the CNMV for the official admission to listing of shares and (ii) the Notes are admitted to listing on the Official List of the Luxembourg Stock Exchange and to trading on the Luxembourg Stock Exchange's Euro MTF Market and that such admissions are maintained for so long as any Notes remain outstanding, unless to do so proves unduly onerous, in which case, it shall use its reasonable endeavours to maintain a listing and admission to trading for the Notes on such other international stock exchange as it may reasonably decide;
- (h) issue and allot or, as the case may be, transfer and deliver Ordinary Shares on exercise of Conversion Rights and at all times following the date on which the New Issue Requirements have been met keep available for issue free from pre-emptive rights out of its authorised but unissued capital sufficient authorised but unissued Ordinary Shares to enable the exercise of a

Conversion Right, and all rights of subscription and conversion for Ordinary Shares, to be satisfied in full;

- (i) ensure that in respect of any Distribution made by the Issuer after any Share Record Date or, as the case may be, the date of any Issuer Conversion Notice but prior to the relevant Registry Date or, as the case may be, the Issuer Conversion Date, and which would not otherwise give rise to adjustment pursuant to the provisions of Condition 6(b), any converting Noteholder is treated as a shareholder for such purposes;
- (j) appoint an Independent Financial Adviser to carry out any action requested of them under the Notes;
- (k) not take any action (nor refrain from taking any action) that would cause the Issuer to be subject generally to the taxing jurisdiction of a territory or a taxing authority of or in that territory with power to tax other than or in addition to the Kingdom of Spain if, at such time and under current laws and regulations, the Issuer would be required generally to make any withholding or deduction for or on account of any taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of such territory or any political subdivision thereof or therein having power to tax in respect of payments of interest on the Notes and where any such withholding or deduction exceeds any such withholding or deduction imposed or levied by or on behalf of the Kingdom of Spain; and
- (l) notify the Noteholders in accordance with Condition 15 promptly (i) if any amounts owing to the Senior Creditors under any Senior Facilities Agreement no longer constitute a Senior Liability by virtue of the operation of the proviso in the definition of Senior Facilities Agreement; and (ii) of the date upon which any or all of the Senior Liabilities have been paid in full.

## **12 Prescription**

Claims against the Issuer for payment in respect of the Notes shall be prescribed and become void unless made within 10 (ten) years (in the case of principal or premium) or 5 (five) years (in the case of interest) from the appropriate Relevant Date in respect of such payment and thereafter any principal, premium interest or other sums payable in respect of such Notes shall be forfeited and revert to the Issuer.

## **13 Replacement of Notes**

If any Note is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of any Paying, Transfer and Conversion Agent subject to all applicable laws and stock exchange requirements, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence and indemnity as the Issuer may require. Mutilated or defaced Notes must be surrendered before replacements will be issued.

## **14 Syndicate of Noteholders, Modification and Waiver**

### *(a) Syndicate of Noteholders*

Noteholders shall meet in accordance with certain regulations governing the Syndicate of Noteholders (the **Regulations**). The Regulations contain the rules governing the Syndicate of Noteholders and the rules governing its relationship with the Issuer and are attached to the Public Deed (as defined in the introduction to these Conditions) and are included in the Fiscal Agency Agreement.

BNY Corporate Trustee Services Limited has been appointed as a temporary Commissioner for the Noteholders. Noteholders shall, by virtue of purchasing and/or holding Notes, be deemed to have agreed to: (i) the appointment of the temporary Commissioner; (ii) grant the temporary Commissioner full power and authority to take any action and/or to execute and deliver any document or notices necessary to implement the New Issue Requirements; and (iii) become a member of the Syndicate of Noteholders. Upon the subscription of the Notes, the temporary Commissioner will call a general meeting of the Syndicate of Noteholders to ratify or reject the acts of the temporary Commissioner, confirm its appointment or appoint a substitute Commissioner for it and to ratify the Regulations. Noteholders shall, by virtue of purchasing and/or holding Notes, be deemed to have granted to the Fiscal Agent full power and authority to take any action and/or to execute and deliver any document or notices for the purposes of attending on behalf of the Noteholders the first meeting of the Syndicate of Noteholders called to confirm the appointment of the temporary Commissioner, approve its actions and ratify the Regulations contained in the Fiscal Agency Agreement, and vote in favour of each of those resolutions.

Provisions for meetings of the Syndicate of Noteholders are contained in the Regulations and in the Fiscal Agency Agreement. Such provisions shall have effect as if incorporated herein.

The Issuer may, with the consent of the Commissioner, but without the consent of the holders of the Notes amend these Conditions insofar as they may apply to the Notes to correct a manifest error or which amendments are of a formal minor or technical nature or to comply with mandatory provisions of law. Subject as aforesaid, no other modification may be made to or waiver of any breach or proposed breach of, these Conditions except with the sanction of a resolution of the Syndicate of Noteholders.

For the purposes of these Conditions,

- (i) **Commissioner** means the *comisario* as this term is defined under the Spanish Corporations Law (*Ley de Sociedades Anónimas*) of the Syndicate of Noteholders; and
- (ii) **Syndicate of Noteholders** means the *sindicato* as this term is described under the Spanish Corporations Law (*Ley de Sociedades Anónimas*).

*In accordance with Spanish law, a general meeting of the Syndicate of Noteholders shall be validly constituted upon first being convened provided that Noteholders holding or representing two-thirds of the Notes outstanding attend. If the necessary quorum is not achieved at the first meeting, a second general meeting may be convened one month after the first general meeting and shall be validly constituted regardless of the number of Noteholders who attend. A resolution shall be passed by holders holding an absolute majority in nominal amount of Notes at any properly constituted assembly.*

(b) *Modification of Fiscal Agency Agreement*

The Issuer shall only permit any modification, waiver or authorisation of any breach or proposed breach or any failure to comply with the Fiscal Agency Agreement if to do so could not reasonably be expected to be prejudicial to the interests of the Noteholders.

(c) *Notification to the Noteholders*

Any modification, waiver or authorisation in accordance with this Condition 14 shall be binding on the Noteholders and shall be notified by the Issuer to the Noteholders as soon as practicable thereafter in accordance with Condition 15.

## 15 Notices

All notices regarding the Notes will be valid if sent to the address of the relevant Noteholder as specified in the Register. The Issuer shall also ensure that all notices are duly published in a manner which complies with the rules and regulations of any stock exchange or other relevant authority on which the Notes are for the time being listed and/or admitted to trading. Any such notice shall be deemed to have been given on the date of such notice. If publication as provided above is not practicable, notice will be given in such other manner, and shall be deemed to have been given on such date, as the Fiscal Agent may approve.

Notwithstanding the above, while all the Notes are represented by the Global Certificate and the Global Certificate is deposited with a common depository for Euroclear Bank SA/NV (**Euroclear**) and/or Clearstream, Luxembourg, *société anonyme* (**Clearstream, Luxembourg**), notices to Noteholders may be given by delivery of the relevant notice to Euroclear or Clearstream, Luxembourg and such notices shall be deemed to have been given to Noteholders on the day following the day of delivery to Euroclear and/or Clearstream, Luxembourg; provided that for so long as any of the Notes are listed on the Official List of the Luxembourg Stock Exchange and traded on the Euro MTF Market of the Luxembourg Stock Exchange and the rules of the Luxembourg Stock Exchange so require, a notice will also be published in a leading newspaper having general circulation in Luxembourg (which is expected to be the *Luxemburger Wort*) or, alternatively on the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)).

## 16 Further Issues

The Issuer may from time to time without the consent of the Noteholders create and issue further notes, Notes or debentures either having the same terms and conditions in all respects as the outstanding notes, Notes or debentures of any series (including the Notes) or in all respects except for the first payment of interest on them and so that such further issue shall be consolidated and form a single series with the outstanding notes, bonds or debentures of any series (including the Notes) or upon such terms as to interest, conversion, premium, redemption and otherwise as the Issuer may determine at the time of their issue.

## 17 Waiver of Statutory Pre-Emption Rights

Without prejudice to Condition 6(b), Noteholders shall, by virtue of purchasing and/or holding Notes, be deemed to have:

- (a) waived any pre-emption rights (*derecho de suscripción preferente/ asignación gratuita*) in relation to Ordinary Shares or further issues by the Issuer of securities convertible into or exercisable or exchangeable for, Ordinary Shares which may arise from Spanish statutory provisions; and
- (b) granted the Commissioner full power and authority to take any action and/or to sign or execute and deliver any documents or notices that may be necessary or desirable for the Noteholders to comply with, and to give effect to, the waiver of pre-emption rights (*derecho de suscripción preferente/ asignación gratuita*) pursuant to Condition 17(a) above.

## **18 Contracts (Rights of Third Parties) Act 1999**

No person shall have any right to enforce any term or condition of the Notes under the Contracts (Rights of Third Parties) Act 1999.

## **19 Governing Law and Jurisdiction**

### *Governing Law*

Save as described below, the Fiscal Agency Agreement and the Notes and any non-contractual obligations arising out of or in connection with them are governed by, and shall be construed in accordance with, English law. The status and subordination of the Notes as described in Condition 1(c) and the provisions of Condition 14 relating to the appointment of the Commissioner and the Syndicate of Noteholders are governed by, and shall be construed in accordance with, Spanish law.

### *Jurisdiction*

The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the Notes and accordingly any legal action or proceedings arising out of or in connection with the Notes (**Proceedings**) may be brought in such courts. The Issuer irrevocably submits to the jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is made for the benefit of each of the Noteholders and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

### *Agent for Service of Process*

The Issuer has appointed Law Debenture Corporate Services Limited at its registered office for the time being, currently at Fifth Floor, 100 Wood Street, London, EC2V 7EX as its agent in England to receive service of process in any Proceedings in England. If for any reason the Issuer does not have such an agent in England, it will promptly appoint a substitute process agent and notify the Noteholders of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.





## REGLAMENTO DEL SINDICATO DE BONISTAS

REGULATIONS	REGLAMENTO
<p>The regulations that follow correspond to the Syndicate of Noteholders of the <b>ISSUE OF EXCHANGEABLE NOTES OF FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A., 2009</b>. The use of the word “exchange” (and its related terms) in these regulations shall be construed as encompassing the conversion of Notes for existing shares and, as set forth in and subject to the conditions provided for the terms and conditions of the issue, the conversion of Notes for new shares.</p> <p>In case of discrepancy, the Spanish version shall prevail.</p>	<p>A continuación se recoge el reglamento del sindicato de Bonistas de la <b>EMISIÓN DE BONOS CANJEABLES DE FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A., 2009</b>. Las menciones que en este reglamento se realicen al término “canje” (y demás términos relacionados) serán interpretadas como referidas al canje de los Bonos por acciones existentes y, conforme a lo establecido y con sujeción a las condiciones previstas en los términos y condiciones de la emisión, a la conversión de los Bonos por acciones de nueva emisión.</p> <p>En caso de discrepancia la versión española prevalecerá.</p>
<p><b>TITLE I</b> INCORPORATION, NAME, PURPOSE, ADDRESS AND DURATION FOR THE SYNDICATE OF NOTEHOLDERS</p>	<p><b>TÍTULO I</b> CONSTITUCIÓN, DENOMINACIÓN, OBJETO, DOMICILIO Y DURACIÓN DEL SINDICATO DE BONISTAS</p>
<p><b>ARTICLE 1º.-INCORPORATION</b></p> <p>In accordance with the provisions of Section Four of Chapter X of the Spanish Royal Decree 1564/1989, of 22 December 1989, approving the Spanish Companies Act, there shall be incorporated, once the Public Deed of the Issue has been filed with the Commercial Registry, a Syndicate of the owners of the Notes (hereinafter, the “Noteholders”) which compose the <b>“ISSUE OF EXCHANGEABLE NOTES OF FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S. A., 2009”</b>.</p> <p>This Syndicate shall be governed by these Regulations and by the Spanish Companies Act and other applicable legislation.</p>	<p><b>ARTÍCULO 1º.-CONSTITUCIÓN</b></p> <p>Con sujeción a lo dispuesto en la Sección Cuarta del Capítulo X del Real Decreto Legislativo 1564/1989, de 22 de diciembre, por el que se aprueba el Texto Refundido de la Ley de Sociedades Anónimas, quedará constituido, una vez inscrita en el Registro Mercantil la escritura pública relativa a la emisión, un sindicato de los titulares de los Bonos (los “Bonistas”) que integran la <b>“EMISIÓN DE BONOS CANJEABLES DE FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S. A., 2009”</b>.</p> <p>Este Sindicato se regirá por el presente reglamento y por el Texto Refundido de la Ley de Sociedades Anónimas y demás disposiciones legales vigentes.</p>
<p><b>ARTICLE 2º.- NAME</b></p> <p>The Syndicate shall be named <b>“SYNDICATE OF NOTEHOLDERS OF THE ISSUE OF EXCHANGEABLE NOTES OF FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S. A., 2009”</b>.</p>	<p><b>ARTÍCULO 2º.- DENOMINACIÓN</b></p> <p>El Sindicato se denominará <b>“SINDICATO DE BONISTAS DE LA EMISIÓN DE BONOS CANJEABLES DE FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A., 2009”</b>.</p>
<p><b>ARTICLE 3º.- PURPOSE</b></p> <p>This Syndicate is formed for the purpose of representing and protecting the lawful interest of the Noteholders before the Issuer, by means of the exercise of the rights granted by the applicable laws and the present Regulations, to exercise and preserve them in a collective</p>	<p><b>ARTÍCULO 3º.- OBJETO</b></p> <p>El Sindicato tendrá por objeto la representación y defensa de los legítimos intereses de los Bonistas frente a la Sociedad Emisora, mediante el ejercicio de los derechos que le reconocen las Leyes por las que se rigen y el presente reglamento, para ejercerlos y conservarlos de forma colectiva, y bajo la</p>

<p>way and under the representation determined by these regulations.</p>	<p>representación que se determina en las presentes normas.</p>
<p><b>ARTICLE 4°.- ADDRESS</b></p> <p>The address of the Syndicate shall be located at Federico Salmón, 13, Madrid.</p> <p>However, the Noteholders General Meeting is also authorized to hold a meeting, when considered convenient, in any other place in Madrid, that is specified in the notice convening the meeting.</p>	<p><b>ARTÍCULO 4°.- DOMICILIO</b></p> <p>El domicilio del Sindicato se fija en Federico Salmón, 13, Madrid.</p> <p>La Asamblea General de Bonistas podrá, sin embargo, reunirse, cuando se considere oportuno, en otro lugar de la ciudad de Madrid, expresándose así en la convocatoria.</p>
<p><b>ARTICLE 5°.- DURATION</b></p> <p>This Syndicate shall be in force until the Noteholders have been reimbursed for any rights they may hold for the principal, interest or any other concept, or until all of the Notes have been exchanged for shares as set forth in the terms and conditions of issue of the Notes.</p>	<p><b>ARTÍCULO 5°.- DURACIÓN</b></p> <p>El Sindicato estará en vigor hasta que los Bonistas se hayan reintegrado de cuantos derechos por principal, intereses o cualquier otro concepto les corresponda, o se hubiese procedido al canje de la totalidad de los Bonos de acuerdo con los términos y condiciones de emisión de los Bonos.</p>
<p style="text-align: center;"><b>TITLE II</b></p> <p style="text-align: center;"><b>SYNDICATE'S REGIME</b></p>	<p style="text-align: center;"><b>TÍTULO II</b></p> <p style="text-align: center;"><b>RÉGIMEN DEL SINDICATO</b></p>
<p><b>ARTICLE 6°.SYNDICATE MANAGEMENT BODIES</b></p> <p>The Management bodies of the Syndicate are:</p> <p>a) The General Meeting of Noteholders (the “General Meeting”).</p> <p>b) The Commissary of the General Meeting of Noteholders (the “Commissary”).</p>	<p><b>ARTÍCULO 6°.- ÓRGANOS DEL SINDICATO</b></p> <p>El gobierno del Sindicato corresponderá:</p> <p>a) A la Asamblea General de Bonistas (la “Asamblea General”).</p> <p>b) Al Comisario de la Asamblea General de Bonistas (el “Comisario”).</p>
<p><b>ARTICLE 7°.- LEGAL NATURE</b></p> <p>The General Meeting, duly called and constituted, is the body of expression of the Noteholders’ will, subject to the provisions of these Regulations, and its resolutions are binding for all the Noteholders in the way established by the Law.</p>	<p><b>ARTÍCULO 7°.- NATURALEZA JURÍDICA</b></p> <p>La Asamblea General, debidamente convocada y constituida, es el órgano de expresión de la voluntad de los Bonistas, con sujeción al presente reglamento, y sus acuerdos vinculan a todos los Bonistas en la forma establecida por las Leyes.</p>
<p><b>ARTICLE 8°.- CALLING</b></p> <p>The General Meeting shall be convened by the Board of Directors of the Issuer or by the Commissary, whenever</p>	<p><b>ARTÍCULO 8°.-LEGITIMACIÓN PARA CONVOCATORIA</b></p> <p>La Asamblea General será convocada por el Consejo de Administración de la Sociedad Emisora o por el</p>

<p>they may deem it convenient.</p> <p>Nevertheless, the Commissary shall convene a General Meeting when Noteholders holding at least the twentieth of the non amortized entire amount of the Issue, request it by writing. In such case, the General Meeting shall be held in the following thirty days of receipt of the written notice by the Commissary.</p>	<p>Comisario, siempre que cualquiera de ellos lo estime conveniente.</p> <p>No obstante, el Comisario deberá convocarla cuando lo soliciten por escrito, y expresando el objeto de la convocatoria, los Bonistas que representen, por lo menos, la vigésima parte del importe total de la Emisión que no esté amortizada. En este caso, la Asamblea General deberá convocarse para ser celebrada dentro de los treinta días siguientes a aquél en que el Comisario hubiere recibido la solicitud.</p>
<p><b>ARTICLE 9º.- PROCEDURE FOR CONVENING MEETINGS</b></p> <p>The General Meeting shall be convened by notice published, at least fifteen days before the date set for the meeting, in the Official Gazette of the Commercial Registry and, if considered convenient, in one of the national or international major circulation newspapers.</p> <p>When the General Meeting is convened to consider or resolve matters relating to the amendment of the terms and conditions of issue of the Notes or any others matters considered to be of similar relevance by the Commissary, the notice shall be published, at least, one month before the date set for the meeting, in the Official Gazette of the Commercial Registry and in one of the national or international major circulation newspapers. In any case, the notice shall state the place and the date for the meeting, the agenda for the meeting and the way in which the ownership of the Notes shall be proved in order to have the right to attend the meeting.</p>	<p><b>ARTÍCULO 9º.- FORMA DE CONVOCATORIA</b></p> <p>La convocatoria de la Asamblea General se hará mediante anuncio que se publicará, por lo menos quince días antes de la fecha fijada para su celebración, en el “Boletín Oficial del Registro Mercantil” y, si se estima conveniente, en uno o más periódicos de difusión nacional o internacional.</p> <p>Cuando la Asamblea General sea convocada para tratar o resolver asuntos relativos a la modificación de los términos y condiciones de emisión de los Bonos y otros de trascendencia análoga, a juicio del Comisario, el anuncio se publicará, por lo menos, un mes antes de la fecha fijada para su celebración, en el “Boletín Oficial del Registro Mercantil” y en uno de los diarios de mayor difusión nacional o internacional. En todo caso, se expresará en el anuncio el lugar y la fecha de reunión, los asuntos que hayan de tratarse y la forma de acreditar la titularidad de los Bonos para tener derecho de asistencia a la Asamblea General.</p>
<p><b>ARTICLE 10º.- RIGHT TO ATTEND MEETINGS</b></p> <p>Noteholders who have been so at least five days prior to the date on which the meeting is scheduled, shall have the right to attend the meeting.</p> <p>The members of the Board of Directors of the Issuer shall have the right to attend the meeting even if they have not been requested to attend.</p>	<p><b>ARTÍCULO 10º.- DERECHO DE ASISTENCIA</b></p> <p>Tendrán derecho de asistencia a la Asamblea General los Bonistas que lo sean, con cinco días de antelación, por lo menos, a aquél en que haya de celebrarse la reunión.</p> <p>Los Consejeros de la Sociedad Emisora tendrán derecho de asistencia a la Asamblea General aunque no hubieren sido convocados.</p>
<p><b>ARTICLE 11º.- RIGHT TO BE REPRESENTED</b></p> <p>All Noteholders having the right to attend the meetings also have the right to be represented by another person. Appointment of a proxy must be in writing and only for each particular meeting.</p>	<p><b>ARTÍCULO 11º.- DERECHO DE REPRESENTACIÓN</b></p> <p>Todo Bonista que tenga derecho de asistencia a la Asamblea General podrá hacerse representar por medio de otra persona. La representación deberá conferirse por escrito y con carácter especial para cada Asamblea General.</p>
<p><b>ARTICLE 12º.- QUORUM FOR MEETINGS AND</b></p>	<p><b>ARTÍCULO 12º.- QUÓRUM DE ASISTENCIA Y</b></p>

<p><b>TO PASS RESOLUTIONS</b></p> <p>The General Meeting shall be entitled to pass resolutions if Noteholders representing at least two thirds of the entire amount of the Notes in issue are present, and these resolutions shall be approved by an absolute majority of the Noteholders present at the meeting</p> <p>Where two thirds of the outstanding Notes do not attend, then the General Meeting may be called again one month after the first General Meeting to resolve by absolute majority of the persons attending. Nevertheless, the General Meeting shall be deemed validly constituted to transact any business within the remit of the Syndicate if Noteholders representing the entire Notes in issue are present and provided that the Noteholders present unanimously approve the holding of such meeting.</p>	<p><b>ADOPCIÓN DE ACUERDOS</b></p> <p>La Asamblea General podrá adoptar acuerdos siempre que los asistentes representen a las dos terceras partes del importe total de los Bonos en circulación de la Emisión, debiendo adoptarse estos acuerdos por mayoría absoluta de los asistentes.</p> <p>Cuando no se lograre la concurrencia de las dos terceras partes de los Bonos en circulación, podrá ser nuevamente convocada la Asamblea General un mes después de su primera reunión pudiendo entonces tomarse los acuerdos por mayoría absoluta de los asistentes. No obstante, la Asamblea General se entenderá convocada y quedará válidamente constituida para tratar de cualquier asunto de la competencia del Sindicato, siempre que estén presentes los Bonistas representantes de todos los Bonos en circulación y los asistentes acepten por unanimidad la celebración de la Asamblea General.</p>
<p><b>ARTICLE 13°.-VOTING RIGHTS</b></p> <p>In the meetings of the General Meeting, each Note, present or represented, shall have the right to one vote.</p>	<p><b>ARTÍCULO 13°.- DERECHO DE VOTO</b></p> <p>En las reuniones de la Asamblea General cada Bono, presente o representado, conferirá derecho a un voto.</p>
<p><b>ARTICLE 14°.- PRESIDENT OF THE GENERAL MEETING</b></p> <p>The Commissary shall be the president of the General Meeting and shall chair the discussions and shall have the right to bring the discussions to an end when he considered it convenient and shall arrange for matters to be put to the vote.</p>	<p><b>ARTÍCULO 14°.- PRESIDENCIA DE LA ASAMBLEA GENERAL</b></p> <p>La Asamblea General estará presidida por el Comisario, quien dirigirá los debates, dará por terminadas las discusiones cuando lo estime conveniente y dispondrá que los asuntos sean sometidos a votación.</p>
<p><b>ARTICLE 15°.- ATTENDANCE LIST</b></p> <p>Before discussing the agenda for the meeting, the Commissary shall form the attendance list, stating the nature and representation of each of the Noteholders present and the number of Notes at the meeting, both directly owned and/or represented.</p>	<p><b>ARTÍCULO 15°.- LISTA DE ASISTENCIA</b></p> <p>El Comisario formará, antes de entrar a discutir el orden del día, la lista de los asistentes, expresando el carácter y representación de cada uno y el número de Bonos propios o ajenos con que concurren.</p>
<p><b>ARTICLE 16°.- POWER OF THE GENERAL MEETING</b></p> <p>The General Meeting may pass resolutions necessary for the best protection of Noteholders' lawful interest before the Issuer; to modify, in accordance with it, the terms and conditions of the issue of the Notes; dismiss or appoint the Commissary; to exercise, when appropriate, the corresponding legal claims and to approve the expenses caused by the defense of the Noteholder's interest.</p>	<p><b>ARTÍCULO 16°.- FACULTADES DE LA ASAMBLEA GENERAL</b></p> <p>La Asamblea General podrá acordar lo necesario para la mejor defensa de los legítimos intereses de los mismos frente a la Sociedad Emisora; modificar, de acuerdo con la misma, las condiciones establecidas para la emisión de Bonos; destituir o nombrar Comisario; ejercer, cuando proceda, las acciones judiciales correspondientes y aprobar los gastos ocasionados por la defensa de los intereses de los Bonistas.</p>

<p><b>ARTICLE 17°.- CHALLENGE OF RESOLUTIONS</b></p> <p>The resolutions of the General Meeting may be challenged by the Noteholders in accordance with Section 2° of Chapter V of the Spanish Companies Act.</p>	<p><b>ARTÍCULO 17°.- IMPUGNACIÓN DE LOS ACUERDOS</b></p> <p>Los acuerdos de la Asamblea General podrán ser impugnados por los Bonistas conforme a lo dispuesto en la Sección 2ª del Capítulo V del Texto Refundido de la Ley de Sociedades Anónimas.</p>
<p><b>ARTICLE 18°.- MINUTES</b></p> <p>The minutes of the meeting may be approved by the General Meeting, after the meeting has been held, or, if not, and within a fifteen days term, by the Commissary and, at least one Noteholder appointed for such purpose by the General Meeting.</p>	<p><b>ARTÍCULO 18°.- ACTAS</b></p> <p>El acta de la sesión podrá ser aprobada por la propia Asamblea General, acto seguido de haberse celebrado ésta, o, en su defecto, y dentro del plazo de quince días, por el Comisario y, al menos un Bonista designado al efecto por la Asamblea General.</p>
<p><b>ARTICLE 19°.- CERTIFICATES</b></p> <p>The certificates shall be issued by the Commissary.</p>	<p><b>ARTÍCULO 19°.- CERTIFICACIONES</b></p> <p>Las certificaciones de las actas serán expedidas por el Comisario.</p>
<p><b>ARTICLE 20°.- INDIVIDUAL EXERCISE OF ACTIONS</b></p> <p>The Noteholders will only be entitled to individually exercise judicial or extra judicial claims in case such claims do not contradict the resolutions previously adopted by the Syndicate, within its powers, and are compatible with the faculties conferred upon the Syndicate.</p>	<p><b>ARTÍCULO 20°.- EJERCICIO INDIVIDUAL DE ACCIONES</b></p> <p>Los Bonistas sólo podrán ejercitar individualmente las acciones judiciales o extrajudiciales que corresponda cuando no contradigan los acuerdos adoptados previamente por el Sindicato, dentro de su competencia, y sean compatibles con las facultades que al mismo se hubiesen conferido.</p>
<p style="text-align: center;"><b>TITLE III</b></p> <p style="text-align: center;"><b>THE COMMISSARY</b></p>	<p style="text-align: center;"><b>TITULO III</b></p> <p style="text-align: center;"><b>DEL COMISARIO</b></p>
<p><b>ARTICLE 21°.- NATURE OF THE COMMISSARY</b></p> <p>The Commissary shall bear the legal representation of the Syndicate and shall be the body for liaison between the Syndicate and the Issuer.</p>	<p><b>ARTÍCULO 21°.- NATURALEZA JURÍDICA DEL COMISARIO</b></p> <p>Incumbe al Comisario ostentar la representación legal del Sindicato y actuar de órgano de relación entre éste y la Sociedad Emisora.</p>
<p><b>ARTICLE 22°.- APPOINTMENT AND DURATION OF THE OFFICE</b></p> <p>Notwithstanding the appointment of the Commissary, which will require the ratification of the General Meeting, this latter shall have the faculty to appoint him and he shall</p>	<p><b>ARTÍCULO 22°.-NOMBRAMIENTO Y DURACIÓN DEL CARGO</b></p> <p>Sin perjuicio del nombramiento del Comisario, que deberá ser ratificado por la Asamblea General, esta última tendrá facultad para nombrarlo y ejercerá su cargo en tanto no sea destituido por</p>

<p>exercise his office while he is not dismissed by the General Meeting.</p>	<p>la Asamblea General.</p>
<p><b>ARTICLE 23°.- FACULTIES</b></p> <p>Commissary shall have the following faculties:</p> <p>1° To protect the common interest of the Noteholders.</p> <p>2° To call and act as president of the General Meeting.</p> <p>3° To inform the Issuer of the resolutions passed by the Syndicate.</p> <p>4° To control the payment of the principal and the interest.</p> <p>5° To carry out all those actions provided for in the terms and conditions of the Notes to be carried out or that may be carried out by the Commissary.</p> <p>6° To execute the resolutions of the General Meeting.</p> <p>7° To exercise the actions corresponding to the Syndicate.</p> <p>8° In general, the ones granted to him in the Law and the present Regulations.</p>	<p><b>ARTÍCULO 23°.- FACULTADES</b></p> <p>Serán facultades del Comisario:</p> <p>1° Tutelar los intereses comunes de los Bonistas.</p> <p>2° Convocar y presidir las Asambleas Generales.</p> <p>3° Informar a la Sociedad Emisora de los acuerdos del Sindicato.</p> <p>4° Vigilar el pago de los intereses y del principal.</p> <p>5° Llevar a cabo todas las actuaciones que estén previstas realice o pueda llevar a cabo el Comisario en los términos y condiciones de los Bonos.</p> <p>6° Ejecutar los acuerdos de la Asamblea General.</p> <p>7° Ejercitar las acciones que correspondan al Sindicato.</p> <p>8° En general, las que le confiere la Ley y el presente reglamento.</p>
<p style="text-align: center;"><b>TITLE IV</b></p> <p style="text-align: center;">SPECIAL DISPOSITIONS</p>	<p style="text-align: center;"><b>TITULO IV</b></p> <p style="text-align: center;">DISPOSICIONES ESPECIALES</p>
<p><b>ARTICLE 24°.- JURISDICTION</b></p> <p>For any dispute arising from these Regulations, the Noteholders, by the own fact of being so, shall submit to the exclusive jurisdiction of the courts and tribunals of the city of Madrid.</p>	<p><b>ARTÍCULO 24°.- SUMISIÓN A FUERO</b></p> <p>Para cuantas cuestiones se deriven de este reglamento, los Bonistas, por el solo hecho de serlo, se someten de forma exclusiva, con renuncia expresa a cualquier otro fuero que pudiera corresponderles, a la jurisdicción de los Juzgados y Tribunales de la ciudad de Madrid.</p>

**FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A.**

**Informe Especial sobre la emisión de obligaciones  
convertibles (en este caso, bonos convertibles) a efectos de lo  
dispuesto en los artículos 292 y 293 del Texto Refundido de la  
Ley de Sociedades Anónimas**



**Informe Especial sobre la emisión de obligaciones convertibles (en este caso, bonos convertibles) a efectos de lo dispuesto en los artículos 292 y 293 del Texto Refundido de la Ley de Sociedades Anónimas**

A la Junta General Extraordinaria de Accionistas de Fomento de Construcciones y Contratas, S.A.

A los fines previstos en los artículos 292 y 293 del Texto Refundido de la Ley de Sociedades Anónimas, y de acuerdo con el encargo recibido de Fomento de Construcciones y Contratas, S.A. (en adelante "FCC" o la "Sociedad") por designación de D. Guillermo Herrero Moro, Registrador Mercantil de Barcelona, emitimos el presente informe especial sobre la propuesta de emisión de obligaciones convertibles (en este caso, de bonos convertibles) en acciones de la propia Sociedad, con exclusión del derecho de suscripción preferente.

**1. Antecedentes y objetivo de nuestro trabajo**

De acuerdo con la información y documentación recibida, el Consejo de Administración de la Sociedad, en uso de la facultad delegada por la Junta General de Accionistas celebrada el 18 de junio de 2008, acordó el pasado 30 de septiembre de 2009 delegar en la Comisión Ejecutiva, con expresas facultades de sustitución en el Consejero Delegado, la facultad de acordar una emisión de bonos canjeables por acciones de la Sociedad, debiendo la Comisión Ejecutiva o, en su caso, el Consejero Delegado, fijar los términos y condiciones definitivos de dicha emisión, y pudiendo completar, subsanar e incluso modificar los inicialmente previstos por el Consejo de Administración.

La Comisión Ejecutiva, haciendo uso de las facultades delegadas a su favor por el Consejo de Administración, acordó en su reunión de 6 de octubre de 2009 llevar a cabo una emisión (en adelante, la "Emisión") de bonos canjeables en acciones de la Sociedad (en adelante, los "Bonos"), estableciendo las bases y modalidades del canje, quedando no obstante pendientes de ser determinados algunos de los términos y condiciones de la Emisión una vez fuera completado el proceso de prospección de la demanda por parte de Barclays Bank, Plc. y Soci t  G n rale (en adelante, las "Entidades Aseguradoras"). La Emisi n tiene como destinatarios inversores cualificados internacionales.

El Presidente y Consejero Delegado de FCC, haciendo uso de las facultades delegadas, fij  el 7 de octubre de 2009, una vez finalizado el citado proceso de prospecci n de la demanda, los t rminos y condiciones de la Emisi n (en adelante, los "T rminos y Condiciones") otorgando con las Entidades Aseguradoras el contrato de emisi n de los Bonos (en adelante, el "Contrato de Emisi n").

El importe inicial de la Emisión establecido dentro de los Términos y Condiciones asciende a CUATROCIENTOS CINCUENTA MILLONES DE EUROS (€450.000.000) y, en virtud del Contrato de Emisión, se concedió a las Entidades Aseguradoras una opción ("Green Shoe") por CINCUENTA MILLONES DE EUROS (€50.000.000), con el fin de cubrir el exceso de demanda de Bonos por inversores. En este sentido, el importe de la Emisión podría, en su caso, ampliarse hasta un importe total de QUINIENTOS MILLONES DE EUROS (€500.000.000).

El 22 de octubre de 2009, el Presidente y Consejero Delegado de FCC, otorgó una Escritura de Protocolización y Elevación a Público de Acuerdos Sociales, en la que se fijaron los Términos y Condiciones finales de la Emisión en su versión inglesa y en castellano (ésta última a efectos informativos) fijando entre otras cuestiones el importe de la Emisión que asciende a CUATROCIENTOS CINCUENTA MILLONES DE EUROS (€450.000.000) ampliable hasta QUINIENTOS MILLONES DE EUROS (€500.000.000) en función del ejercicio por las Entidades Aseguradoras de la opción ("Green Shoe").

El 22 de octubre de 2009 y conforme a lo dispuesto en el artículo 286 de la Ley de Sociedades Anónimas, se publicaron en el Boletín Oficial del Registro Mercantil (BORME) los Términos y Condiciones de la Emisión.

El 23 de octubre de 2009, se otorgó la Escritura relativa a la Emisión, en donde se reflejó que la cuantía de la Emisión definitiva asciende a CUATROCIENTOS CINCUENTA MILLONES DE EUROS (€450.000.000) tras el "no ejercicio" por parte de las Entidades Aseguradoras, en el plazo establecido, de la opción ("Green Shoe") referida anteriormente.

El Consejo de Administración de la Sociedad, que se ha celebrado en el día de hoy, 27 de octubre de 2009, ha aprobado el informe exigido por los artículos 292 y 293 del Texto Refundido de la Ley de Sociedades Anónimas (en adelante, el "Informe de Administradores") que explica las bases y modalidades de la conversión y, adicionalmente, la propuesta de supresión total del derecho de suscripción preferente. Dicho Informe de Administradores, junto con todos sus anexos, se incluye como Anexo II a este informe.

Adicionalmente, dicho Consejo de Administración ha aprobado someter a consideración de la Junta General Extraordinaria de Accionistas convocada en virtud de los acuerdos adoptados, una propuesta de convertibilidad de los bonos canjeables emitidos por un importe de CUATROCIENTOS CINCUENTA MILLONES DE EUROS (€450.000.000), al amparo del acuerdo de la Junta General Ordinaria de Accionistas de 18 de junio de 2008 y en virtud del acuerdo de la Comisión Ejecutiva de 6 de octubre de 2009, por delegación del Consejo de Administración de la Sociedad de 30 de septiembre de 2009, autorizando a que la Sociedad atienda las peticiones de canje de los bonistas mediante la entrega de acciones de nueva emisión. La ampliación de capital máxima necesaria para atender el canje de los bonos convertibles, se ha estimado inicialmente en DOCE MILLONES DE EUROS (€12.000.000), pero sujeto a las posibles modificaciones en función de lo previsto en los Términos y Condiciones y llevaría aparejada la exclusión total del derecho de suscripción preferente de los accionistas de la Sociedad.

Asimismo, este mismo Consejo de Administración ha acordado someter a consideración de la Junta General Extraordinaria de Accionistas convocada, la aprobación de un programa de recompra de acciones de la Sociedad cuya finalidad sea permitir a la misma cumplir sus obligaciones derivadas de la emisión de Bonos canjeables y la reducción del capital social de la Sociedad, mediante la amortización de acciones propias en un importe nominal equivalente al número de nuevas acciones de la Sociedad emitidas para hacer frente a las solicitudes de canje de los titulares de los bonos, y todo ello a efectos de evitar la dilución que se produciría para los accionistas como consecuencia de la emisión de nuevas acciones.

De esta forma, y en cuanto los anteriormente citados acuerdos hayan quedado debidamente inscritos en el Registro Mercantil de Barcelona, se entenderá cumplida la condición establecida en los Términos y Condiciones de los Bonos para que el Emisor pueda atender a sus obligaciones mediante la entrega de acciones ordinarias de la Sociedad de nueva emisión. La mencionada convertibilidad de los Bonos en acciones de nueva emisión de la Sociedad exige la exclusión del derecho de suscripción preferente que, al amparo del artículo 293 del Texto Refundido de la Ley de Sociedades Anónimas, corresponde a los accionistas de la Sociedad.

Conforme a lo establecido en los artículos 292 y 293 del Texto Refundido de la Ley de Sociedades Anónimas, con fecha 8 de octubre de 2009 fuimos designados por D. Guillermo Herrero Moro, Registrador Mercantil de Barcelona, de acuerdo al expediente número A 3930/09, para la emisión del preceptivo Informe Especial del auditor de cuentas distinto del auditor de la Sociedad. Dicha designación se incluye como Anexo I a este informe.

La finalidad de nuestro trabajo no ha sido la de certificar el precio de emisión o conversión de los bonos. Los objetivos de nuestro trabajo han sido los siguientes:

- Manifestar por aplicación de los procedimientos establecidos en la Norma Técnica de Elaboración de Informes Especiales sobre Emisión de Obligaciones Convertibles en el supuesto del artículo 292 del Texto Refundido de la Ley de Sociedades Anónimas, si el informe redactado por los Administradores de la Sociedad, que se adjunta como Anexo II a nuestro informe, contiene la información requerida y recopilada en la citada Norma, que incluye la explicación de las bases y modalidades de conversión.
- Emitir un juicio técnico sobre la razonabilidad de los datos contenidos en el Informe de Administradores y sobre la idoneidad de la relación de conversión y, en su caso, de sus fórmulas de ajuste, para compensar una eventual dilución de la participación económica de los accionistas, de acuerdo con lo establecido en el artículo 293 del Texto Refundido de la Ley de Sociedades Anónimas.

## 2. Procedimientos realizados en nuestro trabajo

Los procedimientos realizados, exclusivamente con el propósito de cumplir con los objetivos descritos, han sido los siguientes:

- **Obtención y análisis global de la siguiente información:**
  - Documento de solicitud de nombramiento de auditor de cuentas, distinto del auditor de la Sociedad, presentado en el Registro Mercantil de Barcelona por FCC, nombramiento del Registro Mercantil de Barcelona y aceptación por nuestra parte del mismo (Anexo I de nuestro informe).
  - Informe aprobado por los Administradores de la Sociedad, junto con todos sus anexos (Anexo II de nuestro informe).
  - Cuentas anuales consolidadas de la Sociedad, junto con el informe de auditoría, correspondientes al ejercicio anual terminado el 31 de diciembre de 2008 emitido por Deloitte, S.L. el 25 de febrero de 2009, en el que expresa una opinión sin salvedades.
  - Estados financieros intermedios consolidados resumidos correspondientes al período de seis meses finalizado el 30 de junio de 2009, junto con el informe de revisión limitada de información financiera intermedia emitido por Deloitte, S.L. el 27 de julio de 2009, en el que no se indica aspecto alguno a resaltar.
  - Actas de Juntas Generales de Accionistas, del Consejo de Administración y de las reuniones de la Comisión Ejecutiva celebradas desde el 1 de enero de 2008 hasta la fecha de emisión de este informe.
  - Escritura de Protocolización y Elevación a Público de Acuerdos Sociales de 22 de octubre de 2009, en la que se fijaron los Términos y Condiciones finales de la Emisión, así como escritura del 23 de octubre de 2009, en donde se reflejó la cuantía definitiva de la misma.
  - Información y explicaciones de la Dirección de la Sociedad relativa a los hechos posteriores, fundamentalmente en los siguientes aspectos:
    - Evolución de pasivos contingentes o compromisos importantes a la fecha de las últimas cuentas anuales consolidadas auditadas y de la existencia de pasivos contingentes o compromisos importantes a la fecha de nuestro informe, en su caso.
    - Modificaciones en el capital social o cambios importantes en deudas a largo plazo o capital circulante que hubieran podido tener lugar entre la fecha de las últimas cuentas anuales consolidadas auditadas y la fecha de nuestro informe, en su caso.
    - Existencia de cambios en algún principio contable desde las últimas cuentas anuales consolidadas auditadas y hasta la fecha.

- Existencia de hechos que pudieran afectar significativamente a los estados financieros consolidados.
- Explicaciones facilitadas por la Dirección de la Sociedad sobre las justificaciones dadas por los Administradores en su informe, en relación con el interés de la Sociedad para justificar la propuesta de emisión de bonos convertibles y suprimir totalmente el derecho de suscripción preferente, y sobre los inversores destinatarios de los bonos convertibles.
- Información relativa a emisiones de bonos convertibles emitidos durante el ejercicio 2009 por entidades europeas no financieras de características similares.
- Términos, condiciones y características de las emisiones de bonos convertibles mencionadas anteriormente y de la emisión de bonos convertibles con exclusión del derecho de suscripción preferente a que se refiere este informe.
- Otra información considerada de utilidad para la realización de nuestro trabajo.
- Hemos verificado que el Informe de Administradores contiene la información que se considera necesaria y suficiente, de acuerdo con la citada Norma Técnica, para su interpretación y comprensión adecuada por parte de los destinatarios del mismo. El detalle de la información que debe contener dicho informe es como sigue:
  - Explicación de las bases y modalidades de la conversión.
  - Identificación del plazo máximo para que pueda llevarse a cabo la conversión.
  - Reproducción literal del Informe de Auditoría del último balance consolidado aprobado.
  - Indicación de que el importe total de la emisión no es superior al capital social desembolsado, más las reservas que figuren en el último balance consolidado aprobado y las cuentas de regularización y actualización de balances, cuando hayan sido aceptadas por el Ministerio de Economía y Hacienda. Todo lo anterior, sin perjuicio de que la limitación anteriormente indicada no aplica a las sociedades anónimas cotizadas, de acuerdo con lo establecido en el artículo 111 bis de la Ley de Mercado de Valores.
  - Indicación del monto del capital social necesario para atender la conversión, teniendo en cuenta el número de obligaciones convertibles anteriores vivas y la autocartera de la Sociedad emisora o en una filial dominada plenamente, siempre que de acuerdo a las bases de la conversión dicha cuantía pueda ser determinada.
  - Sometimiento de las condiciones de emisión, así como la capacidad de la Sociedad para formalizarlas, cuando hayan sido reguladas por la Ley, a las cláusulas

contenidas en los Estatutos Sociales o a los acuerdos de la propia Junta General de Accionistas.

- Detalle de las garantías de emisión a favor de los titulares presentes y futuros y su cobertura sobre el importe de la emisión. En este caso, no es aplicable debido a que el bono emitido en la propuesta de emisión de obligaciones convertibles y/o canjeables es sin garantías.
- Indicación del régimen de prelación establecido en el artículo 285 del Texto Refundido de la Ley de Sociedades Anónimas:
  - El nombre, capital, objeto y domicilio de la Sociedad emisora.
  - Las condiciones de emisión y la fecha y plazos en que deba abrirse la suscripción.
  - El valor nominal, interés, vencimientos y primas y lotes de las obligaciones, si los tuviere.
  - El importe total y las series de los valores que deban lanzarse al mercado.
  - Las garantías de la emisión.
  - Las reglas fundamentales que hayan de regir las relaciones jurídicas entre la sociedad y el Sindicato de obligacionistas y las características de éste.
- Información sobre hechos posteriores significativos.
- Razones que justifican la supresión del derecho preferente de los accionistas a la suscripción de obligaciones convertibles.
- Hemos verificado los cálculos de los métodos de valoración utilizados por los Administradores en la determinación de las bases y modalidades de conversión y otros derechos, si los hubiera, garantizados a los suscriptores de obligaciones.
- Hemos comprobado que el precio de emisión de las obligaciones convertibles no está por debajo de su propio valor nominal.
- Hemos comprobado que el precio de conversión de los Bonos en acciones de nueva emisión, establecido en 39,287 euros por acción, no está por debajo del valor nominal de las acciones por las que se habrían de convertir, ni de su valor teórico contable/neto patrimonial según las cuentas anuales consolidadas auditadas de la Sociedad al 31 de diciembre de 2008.

De acuerdo con la información incluida en las cuentas anuales consolidadas de FCC al 31 de diciembre de 2008, el valor nominal de las acciones asciende a 1,00 euros por acción

y el valor teórico contable/neto patrimonial asciende a 25,107 euros por acción, considerando en el cálculo los intereses minoritarios y a 20,007 euros por acción sin considerar en el cálculo los intereses minoritarios.

- Hemos comprobado que la información contable contenida en el informe de Administradores concuerda con los datos contables de la entidad que sirvieron de base para preparar las últimas cuentas anuales consolidadas auditadas correspondientes al ejercicio 2008.
- Hemos comparado los estados financieros intermedios consolidados resumidos correspondientes periodo de seis meses terminado el 30 de junio de 2009 (los cuales según hemos sido informado son los estados financieros consolidados disponibles más recientes) con las últimas cuentas anuales consolidadas auditadas de la Sociedad.
- Hemos revisado otros hechos posteriores ocurridos, en su caso, desde la aprobación de las últimas cuentas anuales consolidadas auditadas del ejercicio 2008.
- Hemos revisado las Actas de la Junta General de Accionistas, del Consejo de Administración y de las reuniones de la Comisión Ejecutiva celebradas desde el 1 de enero de 2008 y hasta la fecha de emisión de este informe.
- Hemos evaluado la razonabilidad de los datos contenidos en el informe de Administradores para justificar la propuesta de emisión de bonos convertibles con exclusión del derecho de suscripción preferente resultante de la aplicación de la relación de conversión.
- Hemos analizado la idoneidad de la relación de conversión y, en su caso, de sus fórmulas de ajuste, para compensar una eventual dilución de la participación económica de los accionistas.

Entendemos que una relación de conversión de obligaciones convertibles (en este caso, bonos) en acciones y, en su caso, de sus fórmulas de ajuste, para compensar una eventual dilución de la participación económica de los accionistas, es idónea si la emisión de bonos convertibles se efectúa en condiciones de mercado, teniendo en cuenta las características particulares de la compañía, sus estrategias y planes de actuación a futuro, la situación del mercado y otros aspectos que pudieran afectar a la emisión propuesta, dado que son estas condiciones las que determinan la mencionada relación de conversión.

Las principales condiciones de la emisión, entre las que se encuentran aspectos como cupón, prima de conversión, opciones de cancelación y otros términos, se incluyen en el Informe de Administradores, y el detalle de las mismas, en el documento de Términos y Condiciones que se incluye como Anexo I del mencionado Informe de Administradores.

En este sentido, los procedimientos que hemos llevado a cabo al respecto para poder emitir un juicio profesional sobre la idoneidad de la relación de conversión y, en su caso,

de sus fórmulas de ajuste, para compensar una eventual dilución de la participación económica de los accionistas han sido los siguientes:

- Selección de una muestra de emisiones de bonos convertibles con exclusión del derecho de suscripción, emitidos durante el ejercicio 2009, en función de la comparabilidad de los emisores, de acuerdo con la información pública disponible.
  - Comparación de los principales términos, condiciones y características de la emisión de bonos convertibles con exclusión del derecho de suscripción propuesta con los de la muestra de emisiones comparables seleccionada, entre otros el vencimiento, tipo fijo ofrecido por los bonos convertibles, prima de conversión, etc.
  - Realización de otros procedimientos, en caso de que se haya considerado necesario, para analizar si los términos y condiciones propuestos para la emisión de los bonos convertibles están en condiciones de mercado.
  - Consideración de otras condiciones y circunstancias que, en su caso, hayan podido afectar a la idoneidad de la relación de conversión.
- Hemos obtenido una carta firmada por los Administradores y la Dirección de FCC, en la que nos confirman que nos han facilitado todas las hipótesis, datos e informaciones relevantes, así como toda la información necesaria para la elaboración de nuestro informe, y que no se han producido acontecimientos posteriores hasta la fecha del Informe Especial, los cuales no hayan sido puestos en nuestro conocimiento y que pudieran tener un efecto significativo sobre los resultados de nuestro trabajo.

### **3. Aspectos relevantes a considerar en la interpretación de los resultados de nuestro trabajo**

La interpretación de lo requerido del Informe del Auditor como consecuencia de las modificaciones introducidas por la Disposición Final 1.19 de la Ley 3/2009, de 3 de abril, sobre Modificaciones Estructurales de las Sociedades Mercantiles, y la Disposición Final 3 de la Ley 5/2009, de 29 de junio, sobre la Modificación de la Ley de Sociedades Anónimas, en el artículo 293 del Texto Refundido de la Ley de Sociedades Anónimas, así como las opiniones expresadas en este informe, llevan implícitos, además de factores objetivos, otros factores subjetivos que implican juicio y, por lo tanto, no es posible asegurar que terceras partes estén necesariamente de acuerdo con la interpretación y juicios expresados en este informe.

### **4. Conclusión**

De acuerdo con el trabajo realizado, con el alcance descrito anteriormente, y teniendo en consideración los aspectos relevantes a considerar en la interpretación de los resultados de nuestro trabajo, todo ello con el objeto exclusivo de cumplir con los

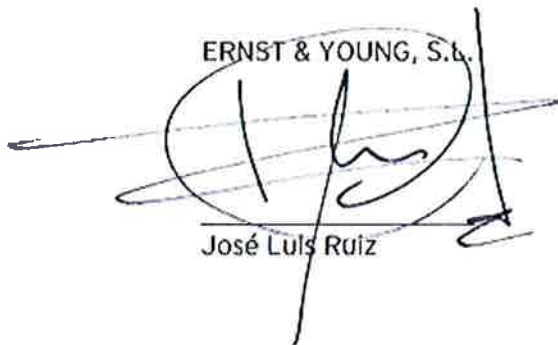


requisitos establecidos en los artículos 292 y 293 del Texto Refundido de la Ley de Sociedades Anónimas, es nuestro juicio profesional que:

- El Informe de Administradores de FCC adjunto, acerca de la propuesta de convertibilidad en acciones de la Sociedad de los Bonos emitidos, con exclusión del derecho de suscripción preferente, contiene la información requerida por la Norma Técnica de Elaboración de Informes Especiales Sobre Emisión de Obligaciones Convertibles en Acciones en el supuesto del artículo 292 del Texto Refundido de la Ley de Sociedades Anónimas.
- El Informe de Administradores de FCC adjunto, incluye datos y explicaciones que justifican detalladamente la propuesta de supresión total del derecho de suscripción preferente requerido por el artículo 293 del Texto Refundido de la Ley de Sociedades Anónimas.
- Los datos y explicaciones contenidos en el mencionado Informe de Administradores de la Sociedad son razonables por estar adecuadamente documentados y expuestos.
- La relación de conversión de bonos convertibles en acciones de la Sociedad, con exclusión del derecho de suscripción preferente y, en su caso, de sus fórmulas de ajuste, para compensar una eventual dilución de la participación económica de los accionistas propuesta es idónea.

\* \* \* \* \*

Este Informe Especial y la información en él contenida han sido preparados únicamente a los fines previstos en los artículos 292 y 293 del Texto Refundido de la Ley de Sociedades Anónimas, por lo que no debe ser utilizado para ninguna otra finalidad.

ERNST & YOUNG, S.L.  
  
José Luis Ruiz

27 de octubre de 2009

**Anexo I**

**Nombramiento de Experto Independiente a efectos de lo dispuesto en los Artículos 292 y 293 del Texto Refundido de la Ley de Sociedades Anónimas.**

- Documento de solicitud de nombramiento de auditor presentado en el Registro Mercantil por FCC.
- Notificación del Registro Mercantil designando a Ernst & Young como auditor para el propósito solicitado.
- Aceptación por parte de Ernst & Young de la designación como auditor para el propósito solicitado.

Registro Mercantil de Barcelona  
Gran Vía Corts Catalanes 184-196  
08038 Barcelona

Barcelona, 6 de octubre de 2009

Muy Sres. míos:

De conformidad con lo establecido en los artículos 292 y 293 del Texto Refundido de la Ley de Sociedades Anónimas, en su redacción dada por la Ley 3/2009, de 3 de abril, les solicitamos la designación de auditor de cuentas distinto al de la Sociedad para la emisión de un Informe Especial sobre la propuesta de emisión de bonos convertibles en acciones de FCC, Fomento de Construcciones y Contratas, S.A. con exclusión del derecho de suscripción preferente de los accionistas de la Sociedad.

A estos efectos le manifestamos que el auditor estatutario de las Cuentas Anuales individuales y consolidadas de FCC, Fomento de Construcciones y Contratas, S.A. es Deloitte, S.L.

Atentamente



D. Felipe B. García Pérez  
Secretario General

REGISTRO MERCANTIL DE BARCELONA REGISTRE MERCANTIL DE BARCELONA		13 h. 03 m.
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REGISTRO MERCANTIL DE BARCELONA  
REGISTRE MERCANTIL DE BARCELONA

Gran Via de les Corts Catalanes, 184, 1a  
Tel. 93 508 14 44  
Fax 93 331 84 22  
08038 BARCELONA

ERNST & YOUNG, S.L.  
Avenida Sarrià, 102-106  
Edificio Sarrià Forum  
08017 BARCELONA

**NOTIFICACION.-** En Barcelona, a 8 de octubre de 2009, la extiendo yo **D. GUILLERMO HERRERO MORO**, Registrador Mercantil de Barcelona, para hacer constar que en fecha 8 de octubre de 2009, quedó designado como Auditor a efectos de lo dispuesto en los artículos 292 y 293 de la Ley de Sociedades Anónimas, en el expediente número A 3930/09 relativo a la mercantil "FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A.", con domicilio social en Barcelona, calle Balmes, 36, la sociedad "ERNST & YOUNG, S.L."

Que, de conformidad con lo establecido en el Art. 344 del Reglamento del Registro Mercantil, en un plazo de 5 días, a contar desde la fecha de recepción de la presente notificación, deberá **comparecer ante el Registrador** y aceptar el cargo o excusarse en el mismo.

Se advierte que la persona que en nombre de la citada sociedad acepte o se excuse, deberá acreditar documentalmente su representación.

Transcurrido dicho plazo sin haber comparecido, caducará su nombramiento.



EL REGISTRADOR

Fdo. Guillermo Herrero

**NOMBRAMIENTO DE EXPERTOS**  
**ACEPTACION DE LA DESIGNACION**



Tel: 93 366 3700

D/D<sup>a</sup>..... JOSE SABATE GALOFRÉ.....  
con DNI 77087350-N..... en representación de  
ERNST & YOUNG, S.L......  
con CIF.....

**EXPONE:**

Que, en fecha 9..... de..... OCUBRE..... de..... 2009.....  
recibió comunicación en la que se indicaba su designación como experto  
independiente en el expediente de valoración de bienes  
número..... 3930109.....

**MANIFIESTA:**

Que acepta la designación, comprometiéndose a realizar el informe en plazo.

Que no concurren en su persona causas de inhabilidad o incompatibilidad.

Barcelona, a 7..... de..... OCUBRE..... de..... 2009.....

ILTRE. SR. REGISTRADOR MERCANTIL DE BARCELONA

**Anexo II**

**Informe de los Administradores de Fomento de Construcciones y Contratas, S.A. en relación con las propuestas de acuerdos que se someterán a la aprobación de la Junta General Extraordinaria de Accionistas sobre convertibilidad de bonos canjeables, exclusión del derecho de suscripción preferente, ampliación de capital social, aprobación de un programa de recompra de acciones de la Sociedad y reducción de capital por amortización de autocartera.**

**Informe de los Administradores de Fomento de Construcciones y Contratas, S.A. en relación con las propuestas de acuerdos que se someterán a la aprobación de la Junta General Extraordinaria de Accionistas sobre convertibilidad de bonos canjeables, exclusión del derecho de suscripción preferente, ampliación de capital social, aprobación de un programa de recompra de acciones de la Sociedad y reducción de capital por amortización de autocartera**

**A los efectos de lo dispuesto en los artículos 292.2, 293.2 b) y 144.1 a) de la Ley de Sociedades Anónimas, los administradores de Fomento de Construcciones y Contratas S.A. formulan por unanimidad el presente Informe en Madrid a 27 de octubre de 2009.**

## 1 OBJETO DEL INFORME

El Consejo de Administración de la Sociedad celebrado en el día de hoy y en el que se aprueba el presente informe, ha acordado convocar una Junta General Extraordinaria de Accionistas de Fomento de Construcciones y Contratas, S.A. ("FCC" o la "Sociedad") incluyendo entre los puntos del Orden del Día que se someterán a la consideración de la misma:

- (i) La aprobación de la convertibilidad de los bonos canjeables en acciones de la Sociedad emitidos por un importe de cuatrocientos cincuenta millones de euros (€ 450.000.000) al amparo del acuerdo de Junta General Ordinaria de Accionistas de 18 de junio de 2008 y en virtud del acuerdo la Comisión Ejecutiva de 6 de octubre de 2009, por delegación del Consejo de Administración de fecha 30 de septiembre de 2009 (los "Bonos"), para permitir a la Sociedad atender las peticiones de canje o conversión de los bonistas mediante la entrega de acciones de nueva emisión. Exclusión total del derecho de suscripción preferente de los accionistas. Ampliación de capital en la cuantía necesaria para atender la conversión de los bonos hasta un máximo previsto inicialmente de doce millones de euros, sujeto a modificaciones en función de lo previsto en los términos y condiciones de los Bonos. Delegación de su ejecución en el Consejo de Administración y en la Comisión Ejecutiva, con facultad de sustitución.
- (ii) La aprobación de un programa de recompra de acciones de la Sociedad cuya finalidad sea permitir a la Sociedad cumplir sus obligaciones derivadas de la emisión de los Bonos y la reducción del capital social de la Sociedad. La aprobación de la reducción del capital de la Sociedad mediante la amortización de acciones propias en un importe nominal equivalente al número de nuevas acciones de la Sociedad emitidas para hacer frente a las solicitudes de canje o conversión de los titulares de los Bonos. Delegación de su ejecución en el Consejo de Administración y en la Comisión Ejecutiva con facultad de sustitución.

Para que la aludida propuesta pueda ser sometida a la aprobación de la Junta General Extraordinaria de Accionistas, es preceptivo que el Consejo de Administración de la Sociedad formule un informe escrito según lo previsto en los artículos 292.2, 293.2 b) y 144.1 a), de la Ley de Sociedades Anónimas ("LSA"), en relación con la explicación de las bases y modalidades de la conversión y la justificación de las propuestas de exclusión del derecho de suscripción preferente, ampliación y reducción de capital y modificación de estatutos (el "Informe").

## 2 CONVERTIBILIDAD DE LOS BONOS Y BASES Y MODALIDADES DE LA CONVERSIÓN

### 2.1 Contexto de la operación

El Consejo de Administración de la Sociedad, en uso de la facultad delegada por el acuerdo décimo de la Junta General Ordinaria de Accionistas celebrada el 18 de junio de 2008, acordó el pasado 30 de septiembre de 2009 delegar en la Comisión Ejecutiva, con expresas facultades de sustitución en el Consejero Delegado, la facultad de acordar una emisión de bonos canjeables por acciones de la Sociedad, cuyos términos fundamentales quedaron reflejados en la correspondiente acta de la reunión, debiendo la Comisión Ejecutiva o, en su caso, el Consejero Delegado, fijar los términos y condiciones definitivos



de dicha emisión, y pudiendo completar, subsanar e incluso modificar los inicialmente previstos por el Consejo de Administración.

La Comisión Ejecutiva, haciendo uso de las facultades delegadas a su favor por el Consejo de Administración, acordó en su reunión de 6 de octubre de 2009 llevar a cabo una emisión (la "Emisión") de bonos canjeables en acciones de la Sociedad (los "Bonos"), por un importe máximo de quinientos millones de euros (€500.000.000) ampliable a quinientos cincuenta millones de euros (€550.000.000), con la posibilidad de suscripción incompleta y vencimiento a cinco (5) años, estableciendo las bases y modalidades del canje, quedando no obstante pendientes de ser determinados algunos de los términos y condiciones de la Emisión una vez fuera completado el proceso de prospección de la demanda por parte de las Entidades Aseguradoras (tal y como se define más adelante) de la misma.

El 7 de octubre de 2009 el Consejero Delegado, en uso de la delegación de facultades realizada por el Consejo de Administración y por la Comisión Ejecutiva, fijó determinados términos y condiciones de la Emisión que no habían sido fijados por la Comisión Ejecutiva y firmó un contrato de emisión de los Bonos ("Subscription Agreement") sujeto a ley inglesa (en adelante, el "Contrato de Emisión") que prevé el compromiso de Barclays Bank PLC y Société Générale como entidades aseguradoras (las "Entidades Aseguradoras") de asegurar la suscripción de la emisión (la "Emisión"). Asimismo, en virtud del Contrato de Emisión, la Sociedad otorgó a favor de las Entidades Aseguradoras una opción ("green shoe") para solicitar a la Sociedad un aumento de hasta cincuenta millones de euros (€50.000.000) en el importe de la Emisión con el fin de poder cubrir peticiones adicionales de Bonos de inversores tras la firma del Contrato de Emisión.

El 22 de octubre de 2009, el Presidente y Consejero Delegado otorgó una Escritura de Protocolización y Elevación a Público de Acuerdos Sociales, en la que fijaba los Términos y Condiciones finales de la Emisión (los "Términos y Condiciones") en su versión inglesa y en castellano (ésta última a efectos informativos) fijando entre otras cuestiones el importe de la Emisión que asciende a cuatrocientos cincuenta millones de euros (€450.000.000) ampliable hasta quinientos millones de euros (€500.000.000) en función del ejercicio por las Entidades Aseguradoras de la opción ("green shoe").

El 23 de octubre de 2009, se otorgó la Escritura relativa a la Emisión, en donde se reflejaba que la cuantía de la Emisión asciende a cuatrocientos cincuenta millones de euros (€450.000.000) tras el no ejercicio por parte de las Entidades Aseguradoras, en el plazo establecido, de la opción ("green shoe") referida anteriormente.

La capacidad de la Sociedad de cumplir sus obligaciones bajo los Bonos mediante la entrega de acciones existentes a los bonistas se verá reforzada, en caso de ser aprobado por la Junta General, a través del programa de recompra de acciones de la Sociedad citado en el punto segundo del Orden del Día de la convocatoria al que se refiere el apartado 5.(c) de este Informe.

La Emisión está dirigida por Barclays Bank PLC y Société Générale y tendrá como destinatarios inversores cualificados internacionales.

Se hace constar que en virtud del artículo 111 bis de la Ley del Mercado de Valores, el límite de la emisión de obligaciones establecido en el artículo 282 de la LSA no es de aplicación en este caso por ser la Sociedad una sociedad anónima colizada. No obstante, la Junta General Ordinaria de Accionistas de 18 de junio de 2008 estableció en su acuerdo décimo que el importe máximo total de la emisión o emisiones de valores canjeables por

acciones de la Sociedad que el Consejo de Administración o, en caso de delegación, la Comisión Ejecutiva o el Consejero Delegado, podrían acordar al amparo de la delegación contenida en el citado acuerdo octavo de dicha Junta General Ordinaria sería seiscientos millones de euros (600.000.000€). El Consejo de Administración hace constar que desde la fecha de la citada Junta General Ordinaria hasta la fecha del presente Informe, la Sociedad no ha llevado a cabo emisión alguna de valores canjeables por acciones de la Sociedad. En consecuencia, el importe de la Emisión cuatrocientos cincuenta millones de euros (€450.000.000), no es superior al límite máximo de seiscientos millones de euros (600.000.000€) fijado por la Junta General Ordinaria de Accionistas de 18 de junio de 2008. Asimismo, la Junta General Ordinaria estableció una limitación relativa al precio de las acciones a los efectos del canje cuando la emisión se realizase con una relación de canje fija. En concreto, estableció que *"el precio de las acciones a los efectos del canje no podrá ser inferior al mayor entre (i) la media aritmética de los precios de cierre de las acciones de la Sociedad en el Mercado Continuo durante el periodo a determinar por el Consejo de Administración, no mayor de tres meses ni menor a quince días, anterior a la fecha de celebración del Consejo de Administración que, haciendo uso de la presente delegación, apruebe la emisión de los valores canjeables, y (ii) el precio de cierre de las acciones en el mismo Mercado Continuo del día anterior al de la celebración del Consejo de Administración que, haciendo uso de la presente delegación, apruebe la emisión de los valores canjeables"*. En este sentido, la limitación establecida por la Junta General Ordinaria se entiende cumplida dado que el Precio de Canje (39,287€) aprobado por el Consejero Delegado es superior a ambos precios, siendo (i) 30,38€ la media aritmética de los precios de cierre de las acciones durante los quince días anteriores a la fecha en que la Comisión Ejecutiva aprobó la Emisión y (ii) 31,60€ el precio de cierre de las acciones del día anterior a la fecha en que la Comisión Ejecutiva aprobó la Emisión.

La Emisión se ha realizado conforme a lo establecido en los términos y condiciones que se recogen como Anexo I a este Informe (en versión inglesa y española, ésta última a efectos informativos) y se resumen en el apartado 2.3 siguiente (los "Términos y Condiciones").

La suscripción y desembolso de los Bonos, una vez se cumplan las condiciones previstas en el referido Contrato de Emisión, incluida la finalización de los trámites para la admisión a cotización de los Bonos en el mercado no regulado (plataforma multilateral de negociación) EuroMTF Luxemburgo, está previsto que tenga lugar no más tarde del día 30 de octubre de 2009 (la "Fecha de Cierre").

El Contrato de Emisión, los Términos y Condiciones y la forma de representación de los Bonos se regirán e interpretarán de conformidad con el Derecho inglés, ya que es la ley aplicable más habitual para este tipo de instrumentos tomando en consideración el tipo de inversor cualificado y el mercado al que se dirige. La capacidad del Emisor, los correspondientes acuerdos societarios, las condiciones relativas al régimen de prelación de Bonos, el nombramiento del Comisario y la constitución del Sindicato de Bonistas se regirán por Derecho español.

El Consejo de Administración desea informar que la obtención del importe derivado de la suscripción de los Bonos, una vez abonados los gastos y comisiones de la Emisión, irá destinado a atender las necesidades generales de financiación de la Sociedad, fortaleciendo la estructura de capital y balance.

## 2.2 Posibilidad de conversión de los Bonos en acciones de nueva emisión de la Sociedad

Tal y como se establece en la Cláusula 6 de los Términos y Condiciones, de adoptarse e inscribirse en el Registro Mercantil el acuerdo propuesto a la Junta General Extraordinaria de Accionistas de la Sociedad, el Emisor tendrá la opción de atender sus obligaciones derivadas del ejercicio por los titulares de los Bonos de su derecho de canje, también mediante la entrega de acciones de nueva emisión de la Sociedad. De esta forma, los Bonos emitidos como canjeables por acciones existentes de la Sociedad, pasarán a tener también la consideración de convertibles por acciones de nueva emisión.

Las bases y modalidades de la conversión de los Bonos en nuevas acciones de la Sociedad serán las que figuran en los Términos y Condiciones de la Emisión, las cuales se resumen en el apartado 2.3 siguiente. En particular, la aprobación por la Junta General e inscripción en el Registro Mercantil del acuerdo de convertibilidad de los Bonos por acciones de nueva emisión de la Sociedad afectará a lo dispuesto en la Cláusula 6 de los Términos y Condiciones, que se resume el punto (vii) del apartado 2.3.

El Consejo de Administración estima que la posibilidad de conversión de los Bonos en acciones de nueva emisión de la Sociedad fortalecerá el balance y los recursos propios de la Sociedad y dotará de flexibilidad a la Sociedad a la hora de atender las peticiones de canje o conversión de los Bonos, tal y como se describe en el apartado 3.1 b) siguiente. Asimismo estima que con esta operación se logra diversificar la base de financiación, con la incorporación del mercado de bonos, como fuente complementaria a la puramente bancaria. Por otro lado, y para evitar una excesiva dilución de los accionistas, el Consejo ha propuesto a la Junta General una reducción de capital en los términos del apartado 5 más adelante.

### 2.3 Bases y modalidades de la conversión

Las bases y modalidades del canje o conversión de los Bonos en acciones existentes o nuevas de la Sociedad son las que figuran en los Términos y Condiciones. Dichas bases y modalidades, que cumplen con lo previsto en los estatutos sociales de la Sociedad, son principalmente las siguientes:

- (i) Sociedad emisora. En cumplimiento de lo dispuesto en el artículo 285.1 a) del Texto Refundido de la Ley de Sociedades Anónimas ("TRLSA"), se hacen constar los siguientes datos relativos a la sociedad emisora:
- La sociedad emisora es FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A., domiciliada en Barcelona, calle Balmes, nº 36, 08007, inscrita en el Registro Mercantil de Barcelona con número 663/04, tomo 36005, folio 22, hoja B-26947, inscripción 2765, y provista de C.I.F. número A-28037224. FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A., es una sociedad anónima cuyas acciones están admitidas a negociación en las Bolsas de Valores de Madrid, Barcelona, Valencia y Bilbao e incluidas en el Sistema de Interconexión Bursátil Español (Mercado Continuo) (el "Emlsor"), siendo Deloitte, S.L. el auditor de cuentas nombrado por la Sociedad e inscrito en el Registro Mercantil de Madrid, hoja M-54414, tomo 3190, folio 1 y provisto de C.I.F. número B-79104469.
  - Constituye su objeto social:

- La construcción, ejecución y mantenimiento de obras de carácter público y privado, así como la explotación de todo tipo de infraestructuras.
- La prestación de servicios de saneamiento, limpieza, gestión, mantenimiento y reparación de edificios, obras, infraestructuras, buques, aeronaves y, en general, todo tipo de instalaciones, públicas o privadas. La prestación de todo tipo de servicios cuya titularidad corresponda a las Administraciones Públicas, incluyendo la realización de cualquier tarea de colaboración inherente a la gestión recaudadora de cualquiera de dichas Administraciones, que no implique ejercicio de autoridad ni custodia de fondos públicos.
- El diseño, investigación, desarrollo, explotación, mantenimiento y comercialización de plantas e instalaciones de tratamiento y depuración de aguas. Aprovechamiento, transformación y comercialización de toda clase de aguas.
- La gestión de residuos y suelos contaminados así como cualquier actividad de asesoramiento, investigación o consultoría vinculado a los mismos. El diseño, investigación, desarrollo, explotación, mantenimiento y comercialización de plantas e instalaciones de reutilización, reciclado, recuperación, valorización, eliminación, almacenamiento o estación de transferencia de residuos o suelos contaminados, así como la compraventa tanto de los subproductos que se originen en dichos tratamientos como de todo tipo de residuos.
- El establecimiento y explotación de fábricas de cemento, cal, yeso y prefabricados derivados de estos materiales, así como la industria del hormigón y la creación y explotación de cuantas industrias se relacionen con los mencionados productos. La investigación y aprovechamiento de yacimientos minerales así como la adquisición, uso y disfrute de permisos, concesiones y demás derechos e intereses mineros; la industrialización y comercialización de los productos mineros derivados de aquellos derechos.
- La promoción y venta de solares, terrenos, conjuntos residenciales, urbanizaciones, locales comerciales, oficinas y, en general, todo tipo de inmuebles. La explotación de tales inmuebles mediante arriendo, o en cualquier otra forma que no implique la transmisión de su propiedad, y la prestación de servicios de estudio, asesoramiento, administración y gestión para terceros propietarios de los mismos.
- El estudio, proyecto, adquisición, cesión, enajenación, promoción, asesoramiento, administración, gestión o explotación en arrendamiento o en cualquier otra forma de centros comerciales.
- El diseño, fabricación, control de calidad, compra, venta, suministro, importación, exportación, alquiler, mantenimiento, reparación, distribución, representación y explotación, incluso publicitaria, de mobiliario y equipamiento urbano, entendido en su más amplia acepción, así como elementos de señalización, tanto en poblaciones

como en vías interurbanas de comunicación, así como de maquinaria y sus componentes, herramientas, vehículos, instalaciones, materiales y equipos.

- La creación, diseño, compra, venta, explotación y cesión, en cualquier forma, de patentes, modelos, marcas, licencias y demás modalidades de la propiedad industrial o intelectual.
- El estudio, proyecto, adquisición, cesión, enajenación, promoción, asesoramiento, administración, gestión o explotación de centros residenciales geriátricos.
- El estudio, proyecto, adquisición, cesión, enajenación, promoción, asesoramiento, administración, gestión o explotación de negocios relacionados con el sector alimentario.
- La prestación de servicios técnicos de ingeniería, incluidos proyectos, estudios e informes, así como la realización de estudios de pre-inversión, controles de calidad, auditorías internas y explotación electrónica de datos.
- El diseño, fabricación, instalación, montaje, compra, venta, suministro, importación, exportación, alquiler, mantenimiento, distribución, representación y explotación de servicios y sistemas eléctricos, electrónicos, informáticos y de telecomunicación, así como el diseño, investigación, desarrollo y comercialización de productos relacionados con dichos servicios.
- El estudio, proyecto, adquisición, cesión, enajenación, promoción, asesoramiento, administración, gestión o explotación de negocios relacionados con el sector energético.
- El estudio, proyecto, adquisición, cesión, enajenación, promoción, asesoramiento, administración, gestión o explotación de servicios de transportes de pasajeros y mercancías, incluyendo los servicios de transporte sanitario de enfermos en vehículos especialmente acondicionados al efecto, de centrales de transporte de cualquier tipo, aeropuertos y estaciones portuarias así como toda clase de servicios a las Compañías prestadoras de transportes. Gestión, explotación y mantenimiento de cualquier tipo de aparcamientos, así como el servicio de retirada y depósito de vehículos.
- El estudio, proyecto, adquisición, cesión, enajenación, promoción, asesoramiento, administración, gestión o explotación de negocios relacionados con los servicios de logística.
- El estudio, proyecto, adquisición, cesión, enajenación, promoción, asesoramiento, administración, gestión o explotación de negocios relacionados con turismo y ocio.
- El estudio, proyecto, adquisición, cesión, enajenación, promoción, asesoramiento, administración, gestión o explotación de cementerios y tanatorios.

- El estudio, proyecto, adquisición, cesión, enajenación, promoción, asesoramiento, administración, gestión o explotación de negocios relacionados con los servicios financieros.
- La participación en otras sociedades y empresas, nacionales o extranjeras, mediante la suscripción, adquisición, negociación y tenencia de acciones, participaciones y cualesquiera otros títulos, ya sean de renta fija o variables. En ningún caso la sociedad realizará las actividades propias de las sociedades e instituciones de inversión colectiva, reguladas por la Ley 35/2003 de 4 de noviembre, de instituciones de inversión colectiva.

La Sociedad podrá realizar todas las actividades indicadas, por sí misma, tanto en España como en el extranjero o participando en otras sociedades, nacionales o extranjeras, de objeto idéntico o análogo. Dicha participación comprenderá tanto la suscripción, compra o adquisición, por cualquier medio válido en Derecho, de títulos o valores mercantiles que confieran una participación en el capital social o en los beneficios de dichas sociedades, como toda modalidad de asociación entre empresas.

Quedan excluidas todas aquellas actividades para cuyo ejercicio la Ley exija requisitos especiales que no queden cumplidos por esta Sociedad.

- Su capital social es de ciento veintisiete millones trescientos tres mil doscientos noventa y seis euros (€127.303.296,00), dividido y representado por ciento veintisiete millones trescientas tres mil doscientas noventa y seis (127.303.296) acciones de un euro de valor nominal cada una de ellas, totalmente suscritas y desembolsadas.
  - El importe de las reservas que figuran en el último balance aprobado es de ochocientos ochenta y seis millones novecientos cincuenta mil euros (886.950.000 €).
- (ii) Importe, valor nominal y tipo de emisión: El importe de la emisión asciende a cuatrocientos cincuenta millones de euros (€450.000.000), estando previsto que pueda declararse la suscripción incompleta.
- Los Bonos se emitirán a la par y con importes principales de cincuenta mil euros (€50.000).
- (iii) Representación: Los Bonos constituyen una serie única y estarán representados por títulos nominativos, inicialmente bajo la forma de un único certificado global (*Global Certificate*) si bien es posible la representación posterior mediante títulos individuales nominativos definitivos (*Definitivo Registered Bonds*).
- (iv) Tipo de interés: Los Bonos devengan intereses desde su emisión al tipo del 6,50 por ciento anual, calculados por referencia a su importe nominal y pagaderos por semestres vencidos, en cuotas iguales el 30 de abril y 30 de octubre de cada año, comenzando el 30 de abril de 2010.
- El cálculo de los intereses, el periodo de devengo de los mismos y la forma de pago se recogen en las Cláusulas 5 y 8 de los Términos y Condiciones.
- (v) Suscripción y desembolso:

Periodo de suscripción. Tal y como prevé el Contrato de Emisión, la suscripción de los Bonos por inversores cualificados tendrá lugar una vez se cumplan las condiciones previstas para ello en el Contrato de Emisión, se haya publicado el correspondiente anuncio en el Boletín Oficial del Registro Mercantil y se inscriba la correspondiente escritura relativa a la emisión, que está previsto que tenga lugar no más tarde de la Fecha de Cierre.

Desembolso. Los Bonos se pagarán por sus suscriptores en efectivo con carácter simultáneo a la entrega de los Bonos, de conformidad con lo previsto en el Contrato de Emisión.

- (vi) Amortización Ordinaria: Los Bonos tendrán una duración de cinco (5) años por lo que su vencimiento tendrá lugar en la fecha en que se cumpla el quinto año desde la Fecha de Cierre, que está prevista para el día 30 de octubre de 2014 ('Final Maturity Date' o 'Fecha de Vencimiento Final'). Llegada la Fecha de Vencimiento Final, los Bonos que no se hubieren adquirido o cancelado, amortizado o canjeado con anterioridad se amortizarán por su principal en la fecha de Vencimiento Final, sujeto a lo dispuesto en el apartado (x) más adelante.
- (vii) Canje o conversión de los Bonos en acciones de la Sociedad: Los Bonos serán voluntariamente canjeables por acciones existentes o convertibles por acciones nuevas de la Sociedad (decisión que corresponde a la Sociedad), cuando el tenedor de los mismos ejercite su derecho de canje o conversión, atendiendo a lo dispuesto en la Cláusula 6 de los Términos y Condiciones, donde se determinan, entre otros, el periodo y el precio de canje o conversión. El precio de canje o conversión, previsto en 39,287€ por acción, está sujeto a los ajustes previstos en la citada Cláusula 6 de los Términos y Condiciones.
- (viii) Garantías. La Emisión cuenta con la garantía del patrimonio personal de la Sociedad, y no se garantiza especialmente mediante garantía alguna de terceros.
- (ix) Admisión a negociación. Se solicitará la admisión a negociación de los Bonos en el mercado no regulado (plataforma multilateral de negociación) EuroMTF Luxemburgo.
- (x) Régimen de prelación. Los Bonos estarán subordinados a determinados créditos en los términos que se recogen en la Cláusula 1 de los Términos y Condiciones. Sin perjuicio de lo anterior, los Bonos tendrán el mismo rango (*pari passu*) que la deuda restante no garantizada, presente y futura, de la Sociedad, excepto en caso de concurso respecto de aquella deuda que pueda tener preferencia según lo dispuesto en las leyes de naturaleza imperativa y de aplicación general.
- (xi) Sindicato de Bonistas y Comisario: Se ha constituido un Sindicato de Bonistas, bajo la denominación "Sindicato de Bonistas de la Emisión de Bonos Canjeables de Fomento de Construcciones y Contratas, S.A. 2009", que actuará conforme a su Reglamento y al TRLSA. Se ha designado a BNY Corporate Trustee Services Limited como Comisario provisional. Se adjunta como **Anexo II** a este Informe el reglamento del Sindicato de Bonistas.

En el caso de que la Junta General Extraordinaria de Accionistas no aprobara la convertibilidad de los Bonos que se propone para permitir que la Sociedad pueda atender las solicitudes de canje de los inversores mediante la entrega de acciones de nueva emisión, la Emisión de los Bonos continuará en vigor y con plenos efectos en los términos

acordados por la Comisión Ejecutiva de fecha 6 de octubre de 2009 y por el Consejero Delegado, en virtud de las delegaciones conferidas por el Consejo de Administración el 30 de septiembre de 2009 y por la Comisión Ejecutiva, respectivamente.

### 3 JUSTIFICACIÓN DE LA EXCLUSIÓN DEL DERECHO DE SUSCRIPCIÓN PREFERENTE

El Consejo de Administración propone, en el marco de la operación descrita, la exclusión del derecho de suscripción preferente que correspondería a los accionistas de la Sociedad. Dado que corresponde a la Junta General de Accionistas la adopción del acuerdo de exclusión, la solicitud de exclusión se realiza por el Consejo de Administración de conformidad con lo previsto en el artículo 293.2 b) de la LSA, según la redacción dada por la Ley 3/2009, de 3 de abril, sobre modificaciones estructurales de las sociedades mercantiles. Con el fin de cumplir con lo dispuesto en el artículo mencionado y, en última instancia, de acreditar el cumplimiento de los requisitos legales en la adopción del acuerdo de convertibilidad de los Bonos y consecuente ampliación de capital en la cuantía máxima necesaria para atender a la conversión de los Bonos, el Consejo de Administración de FCC informa de lo siguiente:

#### 3.1 Ventajas de la exclusión del derecho de suscripción preferente

El Consejo de Administración considera que la estructura de la operación propuesta (incluyendo la propuesta de aprobación de la reducción del capital social en los términos descritos en el apartado 5 siguiente, con el fin de evitar la dilución de los accionistas en el caso de que se emitan nuevas acciones de la Sociedad para atender las solicitudes de canje de los bonistas), resulta idónea para lograr el fin con ella buscado y que guarda la necesaria relación de proporcionalidad entre el objetivo buscado y el medio elegido. Para acreditar de forma más detallada la idoneidad de la operación propuesta, conviene hacer constar las ventajas de la estructura que se propone:

- (a) Inversores cualificados. Dirigir la emisión a inversores cualificados internacionales va a proporcionar a la Sociedad la oportunidad de captar un importante volumen de recursos financieros de un número limitado de inversores activos en los mercados financieros internacionales, aprovechando la gran capacidad de volumen de negocio de dichos mercados.

Además, el inversor al que se dirigen las emisiones de bonos canjeables y convertibles es un tipo de inversor diferente al que opera en el mercado de financiación bancaria y al que opera en el mercado de renta variable, ambos tipos bien conocidos por la Sociedad ya que ha accedido a dichos mercados para captar recursos con los que financiar su actividad y ejecutar su plan de negocio. Se trataría, por consiguiente, de una oportunidad para abrir una nueva fuente de financiación para la Sociedad que se deriva de poder acudir a los inversores que operan en el mercado de los instrumentos convertibles por acciones de sociedades cotizadas que, a cambio de una menor remuneración de sus instrumentos de deuda, se les atribuye la oportunidad, en su caso, de participar en el capital de la Sociedad.

- (b) Flexibilidad en el cumplimiento de los Términos y Condiciones. La exclusión del derecho de suscripción preferente de los accionistas, necesaria para que los Bonos suscritos por los inversores cualificados internacionales que no ostentan la condición de accionistas de FCC puedan ser convertibles en nuevas acciones de



la Sociedad, va a dotar a la Sociedad de un mecanismo adicional al ya existente de entrega de acciones emitidas, para poder atender, en cumplimiento de lo establecido en los Términos y Condiciones, las peticiones de canje o conversión de los titulares de los Bonos mediante la emisión de nuevas acciones.

- (c) Rapidez de ejecución. Menor exposición a la volatilidad del mercado. Asimismo, la estructura de la operación ha permitido la colocación de los Bonos por parte de las Entidades Aseguradoras a los inversores en un período muy breve de tiempo y aprovechando la situación de los mercados internacionales (lo que se conoce como la "ventana de mercado"), sin quedar a expensas de la volatilidad del mercado. Si bien los inversores a los que se han colocado los Bonos conocían el carácter no convertible de los mismos en el momento de la emisión, han sido informados y tienen interés en la aprobación de la convertibilidad de los Bonos por acuerdo de la Junta General de Accionistas.

Cualquier estrategia alternativa a la que aquí se propone podría demorar el proceso de captación de recursos. Para demostrarlo, basta recordar que en el caso de una emisión de obligaciones convertibles sin exclusión de los derechos de suscripción preferente, éstos deben poder ser ejercitados durante un plazo que no será inferior a quince días desde la publicación del anuncio de emisión en el Boletín Oficial del Registro Mercantil.

- (d) Ahorro de costes. La exclusión del derecho de suscripción preferente disminuye el cupón de la emisión y de la deuda mejorando los ratios de interés y de conversión.

En este sentido, se puede afirmar que, en general, el cupón de los bonos convertibles y/o canjeables es reducido si se compara con el coste de la deuda bancaria y de las emisiones de deuda subordinada no convertible, por reflejarse en el cupón de un valor convertible el valor de la opción de conversión que ostentan los inversores. En particular y en el caso de esta Emisión, el tipo de interés fijo de 6,50% resulta menor que aquel al que la compañía tendría acceso en los mercados de capitales de deuda subordinada en estos momentos para operaciones con características similares.

- (e) Menor coste de formalización. Cualquier emisión de obligaciones o bonos convertibles sin exclusión del derecho de suscripción preferente por una sociedad cotizada conlleva la necesidad de registrar un Folleto Informativo de oferta pública (compuesto por Documento de Registro, Nota de Valores y Resumen) con la Comisión Nacional del Mercado de Valores (CNMV), al tener que negociarse los derechos en las Bolsas de Valores españolas en las que la sociedad emisora esté admitida a cotización. En el caso de la Sociedad, al no tener inscrito un Documento de Registro con la CNMV, debería elaborar y registrar un Folleto completo, sin la posibilidad de registrar únicamente una Nota de Valores que complementase a un Documento de Registro ya inscrito, lo que demoraría el proceso de lanzamiento de la operación y añadiría gastos adicionales en asesores externos para la ejecución de la misma.

La estructura propuesta de la Emisión, que prevé la admisión a cotización de los Bonos emitidos en un mercado organizado pero no regulado y sin oferta pública previa, va a permitir que ni con ocasión de la emisión del canjeable o su conversión en convertible, ni con ocasión de la emisión de las acciones o su

admisión a cotización en Bolsa, la Sociedad tenga que registrar Folleto Informativo alguno con la CNMV.

### 3.2 Fijación del precio de conversión

El precio de conversión de los Bonos en acciones de nueva emisión es el que figura en los Términos y Condiciones para el supuesto de canje de los Bonos por acciones existentes de la Sociedad. El Consejo desea informar que el precio de conversión de los Bonos (39,287€) se ha determinado teniendo en cuenta:

- (a) el precio en Bolsa de las acciones de la Sociedad, determinado sobre la base de la media ponderada por volumen de cotización de dicha acción en las Bolsas de Valores españolas durante la sesión bursátil del día 7 de octubre; y
- (b) una prima de conversión del 28%, determinada a resultas del proceso de prospección de la demanda (*bookbuilding*) realizado por las Entidades Aseguradoras en el mercado que, mediante la recepción, clasificación y análisis de propuestas de Inversión, ha permitido que el precio se ajuste a las expectativas del mercado. Esta técnica, habitual en este tipo de operaciones, es idónea para minimizar los costes de la obtención de fondos, optimizar las condiciones económicas de la Emisión y, en general, incrementar las posibilidades de éxito de la Emisión.

El Consejo de Administración quiere poner de relieve que el precio de conversión de los Bonos en acciones y, por ello, el tipo de emisión de las mismas (nominal y prima de emisión) es en todo caso muy superior al valor neto patrimonial de las acciones de la Sociedad según los estados financieros consolidados de la Sociedad a 31 de diciembre de 2008, aprobados por la Junta General Ordinaria de la Sociedad en su reunión celebrada el 10 de junio de 2009, que asciende a 25,107€ por acción. Se adjunta como Anexo III a este Informe la reproducción literal del informe de auditoría en relación con los estados financieros consolidados de la Sociedad a 31 de diciembre de 2008.

Debido a los beneficios que se derivan para la Sociedad de la estructura de la operación planteada y el precio de conversión establecido, el Consejo de Administración informa que la estructura de la operación no sólo resulta idónea para alcanzar el fin deseado, sino que resulta conveniente desde la perspectiva del interés social. Asimismo, y sin perjuicio de las ventajas que con la medida de exclusión se obtienen para la Sociedad, para evitar los inconvenientes que eventualmente podrían causarse a aquellos accionistas que viesen mermadas sus expectativas a causa de la dilución que podría entrañar (en función de cómo evolucione la cotización de la acción) la presente emisión de obligaciones convertibles sin derechos, el Consejo de Administración somete a la consideración de la Junta General de Accionistas de la Sociedad la aprobación de la reducción de capital social por amortización de acciones en autocartera descrita en el apartado 5 siguiente.

La exactitud de las afirmaciones contenidas en las secciones 2 y 3 anteriores viene corroborada mediante el correspondiente informe especial de un auditor de cuentas distinto del auditor de la Sociedad a tenor de lo dispuesto en los artículos 292 de la LSA, relativo a las bases y modalidades de la conversión, y 293 de la LSA, relativo al juicio técnico sobre la razonabilidad de los datos contenidos en el presente Informe de administradores y sobre la idoneidad de la relación de conversión.

## 4 JUSTIFICACIÓN DE LA PROPUESTA PARA AMPLIAR CAPITAL Y DELEGACIÓN EN EL CONSEJO Y EN LA COMISIÓN EJECUTIVA, CON FACULTAD DE SUSTITUCIÓN

## **EN CUALQUIERA DE SUS MIEMBROS, DE LA EJECUCIÓN DEL AUMENTO DE CAPITAL**

El Consejo de Administración informa de que, con el fin de dotar a la Sociedad de la necesaria flexibilidad y capacidad para atender las peticiones de canje o conversión de los titulares de los Bonos y por los motivos expuestos en el presente Informe, en el caso de ser aprobada la propuesta de convertibilidad que es objeto de la sección 2 de este Informe, propone a la Junta General Extraordinaria de Accionistas la aprobación de la ampliación del capital social de la Sociedad en la cuantía necesaria para atender las peticiones de canje o conversión de los bonistas a través de la emisión de nuevas acciones de la Sociedad hasta un máximo previsto inicialmente de doce millones de euros (12.000.000€), sujeto a modificaciones en función de lo previsto en los Términos y Condiciones.

Asimismo, se propone a la Junta General Extraordinaria de Accionistas que delegue a favor del Consejo de Administración (al amparo de lo dispuesto en la letra a) del apartado 1 del artículo 153 de la Ley de Sociedades Anónimas) y de la Comisión Ejecutiva, con expresas facultades de sustitución a favor de cualquiera de sus miembros, la ejecución, en cada una de las ocasiones en que la Sociedad decida atender las solicitudes de canje o conversión de los bonistas a través de la emisión de nuevas acciones de la Sociedad, y en el modo y manera que tengan por conveniente, el acuerdo de ampliación de capital y decidan la fecha o fechas en la que la ejecución del aumento de capital deba llevarse a efecto, que serán en todo caso posteriores a la adopción del acuerdo de aumento de capital por la Junta General Extraordinaria. Asimismo, se propone facultar al Consejo de Administración y la Comisión Ejecutiva, con expresas facultades de sustitución en cualquiera de sus miembros, para que puedan decidir las condiciones del aumento de capital en todo lo no previsto por la Junta General, con el límite del número de acciones que sea necesario emitir para atender las peticiones de canje o conversión de los Bonos por los bonistas en cada momento mediante la emisión de nuevas acciones.

Congruentemente con ello, se propone delegar en el Consejo de Administración y en la Comisión Ejecutiva, con expresas facultades de sustitución a favor de cualquiera de sus miembros, la modificación de la redacción del artículo 5 de los Estatutos Sociales, para adaptarlo a la cifra de capital resultante de cada una de las ejecuciones del aumento de capital.

### **5 JUSTIFICACIÓN DE LA PROPUESTA PARA REDUCIR EL CAPITAL SOCIAL MEDIANTE LA AMORTIZACIÓN DE AUTOCARTERA CON EL FIN DE EVITAR LA POSIBLE DILUCIÓN DE LOS ACCIONISTAS DERIVADA DE LA CONVERTIBILIDAD DE LOS BONOS EN ACCIONES DE NUEVA EMISIÓN. DELEGACIÓN DE LA EJECUCIÓN EN EL CONSEJO Y EN LA COMISIÓN EJECUTIVA, CON FACULTAD DE SUSTITUCIÓN EN CUALQUIERA DE SUS MIEMBROS**

La aprobación por la Junta General de Accionistas de la convertibilidad de los Bonos y la exclusión del derecho de suscripción preferente correspondiente a los accionistas en virtud del artículo 293 de la Ley de Sociedades Anónimas, podría ocasionar que los accionistas de la Sociedad vieran mermadas sus expectativas a causa de la dilución derivada (en función de cómo evolucione la cotización de la acción) de toda emisión de obligaciones convertibles sin derechos.

El Consejo de Administración ha tomado en consideración las ventajas que supondrá para la Sociedad la aprobación por la Junta General de Accionistas de la convertibilidad de los

Bonos. Asimismo, ha valorado el riesgo de que tal convertibilidad no llegara a ser aprobada por la Junta General como consecuencia de la negativa de los accionistas a quedar expuestos a una posible dilución de su participación en la Sociedad si, llegado el momento, las solicitudes de canje o conversión de los bonistas fueran atendidas con acciones de nueva emisión.

Al objeto de hacer más atractiva para los accionistas de la Sociedad la aprobación de la medida propuesta, el Consejo de Administración ha decidido someter asimismo a la consideración de la Junta General Extraordinaria de Accionistas la aprobación de la reducción del capital social mediante la amortización del número de acciones propias que correspondan y que hayan sido adquiridas en virtud del programa de recompra referido en el apartado (c) siguiente, o que ya figuren en la autocartera de la Sociedad (incluidas a estos efectos las 5.090.000 acciones puestas a disposición de las Entidades Aseguradoras mediante préstamo), en un importe nominal equivalente al número de nuevas acciones emitidas por la Sociedad al objeto de hacer frente a las peticiones de canje de los Bonos.

Para acreditar de forma más detallada la idoneidad de la reducción de capital propuesta, el Consejo de Administración hace constar lo siguiente:

- (a) Eliminación del efecto dilutivo de la convertibilidad de los Bonos para los accionistas. En caso de ser aprobada por la Junta General de la Sociedad, la reducción de capital propuesta evitará la posible dilución de los accionistas derivada de la emisión de nuevas acciones para hacer frente a las solicitudes de canje o conversión de los Bonos por los bonistas.
- (b) Automaticidad del sistema. La propuesta de acuerdo de reducción de capital en los términos expuestos, incluye una delegación de su ejecución a favor del Consejo de Administración y de la Comisión Ejecutiva, con expresas facultades de sustitución en cualquiera de sus miembros, similar a la delegación acordada en relación con la ampliación de capital para hacer frente a la conversión de los Bonos en acciones de la Sociedad de nueva emisión. Asimismo, la reducción de capital se realizará con cargo a beneficios o reservas libres. Conforme a lo establecido en el artículo 167.3 del TRLSA se dotará una reserva, de la que sólo será posible disponer con los mismos requisitos que para la reducción de capital, por el importe nominal de las acciones propias amortizadas. En consecuencia, el derecho de oposición de los acreedores sociales no será aplicable a la reducción de capital así acordada.

Por tanto, la existencia de ambas delegaciones y la falta de necesidad de esperar el plazo legalmente establecido para la oposición de acreedores en el caso de la reducción de capital, dotarán al sistema de ejecución de los acuerdos de ampliación y reducción de capital social que correspondan de total automaticidad, posibilitando que la misma persona u órgano corporativo que ejecute, en una o varias veces, el acuerdo de ampliación de capital, ejecute el correspondiente acuerdo de reducción con carácter simultáneo o inmediato.

- (c) Programa de recompra de acciones de la Sociedad. Con el fin de posibilitar no sólo la disponibilidad por parte de la Sociedad del número de acciones propias necesario para dar cumplimiento a la obligación de entrega de acciones existentes para atender las solicitudes de canje o conversión de los titulares de los Bonos (si la Sociedad opta por esta posibilidad), sino también la del número de acciones

propias necesario para llevar a cabo la reducción de capital por amortización autocartera que evite la dilución de los accionistas, el Consejo de Administración ha considerado conveniente estructurar las adquisiciones de autocartera que deban llevarse a cabo en el futuro a través de un programa de recompra de acciones de la Sociedad al amparo de lo dispuesto en el artículo 3 y siguientes del Reglamento 2273/2003 de la Comisión Europea, de 22 de diciembre (el "Programa"), dejando sin efecto en lo no ejecutado el acuerdo sexto adoptado en la Junta General de 10 de junio de 2009 relativo a la adquisición de autocartera.

Con el Programa se posibilitará la reducción del capital de la Sociedad mediante la amortización de las acciones propias que se adquieran en el futuro para llevar a cabo dicha amortización, evitando la necesidad de formular una oferta pública de adquisición conforme a la exención prevista en el artículo 12.2 del Real Decreto 1066/2007, de 27 de julio, sobre régimen de las ofertas públicas de adquisición de valores, en relación con los programas de recompra previstos en el del Reglamento 2273/2003 de la Comisión Europea.

## **6 TEXTO ÍNTEGRO DE LAS PROPUESTAS DE ACUERDOS OBJETO DE ESTE INFORME**

El texto íntegro de las propuestas de acuerdos que se someten a la Junta General Extraordinaria de Accionistas convocada para su celebración los próximos días 30 de noviembre de 2009, en primera convocatoria, y 1 de diciembre de 2009, en segunda convocatoria, es el siguiente:

***1º Aprobar la convertibilidad de los bonos canjeables en acciones de la Sociedad emitidos por un importe de cuatrocientos cincuenta millones de euros al amparo del acuerdo de Junta General Ordinaria de Accionistas de 18 de junio de 2008 y en virtud del acuerdo de la Comisión Ejecutiva de 6 de octubre de 2009, por delegación del Consejo de Administración de fecha 30 de septiembre de 2009, para permitir a la Sociedad que atienda las peticiones de canje de los bonistas mediante la entrega de acciones de nueva emisión.***

***Exclusión total del derecho de suscripción preferente de los accionistas. Ampliación de capital en la cuantía necesaria para atender la conversión de los bonos hasta un máximo inicialmente previsto en doce millones de euros, sujeto a modificaciones en función de lo previsto en los términos y condiciones de los bonos.***

***Delegación para la ejecución de estos acuerdos en el Consejo de Administración y en la Comisión Ejecutiva, con facultad de sustitución.***

### **A. Aprobar la convertibilidad de los Bonos**

Aprobar, en relación con los bonos canjeables (los "Bonos") en acciones de la Sociedad emitidos por un importe de cuatrocientos cincuenta millones de euros (€450.000.000) al amparo del acuerdo de Junta General Ordinaria de Accionistas de 18 de junio de 2008 y en virtud del acuerdo de la Comisión Ejecutiva de 6 de octubre de 2009, por delegación del Consejo de Administración de 30 de septiembre de 2009, la convertibilidad de los Bonos para permitir su conversión en acciones de la Sociedad de nueva emisión, autorizando por consiguiente que la Sociedad pueda atender las peticiones de canje de los bonistas también mediante la entrega de acciones de nueva emisión, en los términos previstos en los

Términos y Condiciones de la emisión. De esta forma, y en cuanto el presente acuerdo haya quedado debidamente inscrito en el Registro Mercantil, se entenderá cumplida la condición establecida en los Términos y Condiciones de los Bonos para que el Emisor pueda atender sus obligaciones mediante la entrega de acciones ordinarias de la Sociedad de nueva emisión.

Las bases y modalidades de conversión serán las establecidas para el canje en los Términos y Condiciones de los Bonos aprobados por la Comisión Ejecutiva el día 6 de octubre de 2009, y completados por el Consejero Delegado de la Sociedad el 22 de octubre de 2009, haciendo uso de la sustitución a su favor acordada por la Comisión Ejecutiva.

**B. Acordar la exclusión del derecho de suscripción preferente**

Acordar la exclusión del derecho de suscripción preferente que la aprobación de la convertibilidad en acciones de nueva emisión de la Sociedad exige, y que de otra forma correspondería a los accionistas de la Sociedad respecto de los Bonos al amparo del artículo 293 del TRLSA.

La supresión del derecho de suscripción preferente de los accionistas de la Sociedad ha quedado debidamente justificada en atención a exigencias del interés social y a las razones expuestas por los Administradores en el correspondiente informe que ha sido puesto a disposición de los Señores accionistas a partir del momento de la convocatoria de la Junta. Asimismo, la corrección del contenido del informe de los Administradores viene corroborada mediante un informe emitido por el Auditor de Cuentas distinto al de la Sociedad nombrado por el Registro Mercantil y que también ha sido puesto a disposición de los Señores accionistas a partir del momento de la convocatoria de la Junta.

Sin perjuicio de lo anterior, y conforme a lo establecido en el Informe de los Administradores, el Consejo de Administración o la Comisión Ejecutiva, llegado el momento, adoptará las medidas oportunas que tengan por objeto evitar el efecto dilutivo que la emisión de las nuevas acciones tendría de otra forma para los accionistas, debiendo hacer uso de las facultades conferidas por esta Junta General de Accionistas de la Sociedad.

**C. Acordar el aumento de capital social necesario para atender la conversión de los Bonos**

De acuerdo con lo previsto en el artículo 292 del TRLSA, acordar aumentar el capital social de la Sociedad en la cuantía necesaria para atender la conversión de los Bonos que puedan solicitar los tenedores de los mismos de acuerdo con los Términos y Condiciones hasta un máximo previsto inicialmente de doce millones euros, pero sujeto a las posibles modificaciones en función de lo previsto en los Términos y Condiciones.

Dicho aumento de capital se ejecutará, total o parcialmente, por el Consejo de Administración o la Comisión Ejecutiva, con expresas facultades de sustitución a favor de cualquiera de sus miembros, en cada ocasión en que sea necesario para atender la conversión de los Bonos, mediante la emisión de nuevas acciones ordinarias del mismo valor nominal y con igual contenido de derechos que las acciones ordinarias en circulación en la fecha o fechas de ejecución del correspondiente acuerdo de aumento. Cada vez que, en el modo indicado, el

Consejo de Administración, la Comisión Ejecutiva o cualquiera de los miembros de esta última ejecuten este Acuerdo darán nueva redacción al artículo de los Estatutos Sociales relativo al capital.

El número de acciones ordinarias de nueva emisión que, en su caso, se emitirán al ejercer un derecho de canje o conversión se determinará dividiendo el importe nominal del Bono o Bonos correspondiente entre el Precio de Canje en vigor en la fecha de canje pertinente.

De acuerdo con lo previsto en el artículo 159.4 del TRLSA no habrá lugar al derecho de suscripción preferente de los accionistas de la Sociedad en las ampliaciones de capital que se deban a la conversión de los Bonos en acciones.

Se acuerda solicitar la admisión a negociación de las nuevas acciones en las Bolsas de Madrid, Barcelona, Bilbao y Valencia a través del Sistema de Interconexión Bursátil (Mercado Continuo). Se faculta al Consejo de Administración y a la Comisión Ejecutiva, con facultades para delegar a su vez en cualquiera de sus miembros, para que cualquiera de ellos, indistintamente puedan llevar a cabo las correspondientes solicitudes, elaboren y presenten todos los documentos oportunos en los términos que consideren conveniente y realicen cuantos actos sean necesarios a tal efecto.

**D. Informes y Términos y Condiciones**

La adopción del presente acuerdo se ha realizado sobre la base y previa puesta a disposición de los Señores accionistas de la Sociedad a partir del momento de la convocatoria de la Junta, de la correspondiente propuesta de texto de acuerdo, así como, a los efectos previstos en los artículos 144, 292 y 293 del TRLSA, del informe justificativo del Consejo de Administración y del preceptivo informe del Auditor de Cuentas distinto al de la Sociedad designado por el Registro Mercantil, que se adjuntan como **Apéndices II y III** a la presente propuesta.

Se deja constancia de que los referidos informes, en lo que a la exclusión del derecho de suscripción preferente se refiere, fueron preparados teniendo en cuenta la redacción dada al artículo 293 del TRLSA por la Ley 3/2009, de 3 de abril, sobre modificaciones estructurales, en vigor desde el pasado 4 de julio de 2009.

También se han puesto a disposición de los accionistas de la Sociedad los Términos y Condiciones de los Bonos objeto de la Emisión.

**E. Delegación de facultades**

Sin perjuicio de las delegaciones de facultades específicas contenidas en los apartados anteriores, se acuerda facultar al Consejo de Administración y a la Comisión Ejecutiva, con la amplitud que se requiera en Derecho y con expresas facultades de sustitución en cualquiera de sus miembros, para que cualquiera de ellos, indistintamente pueda ejecutar el presente Acuerdo, pudiendo en particular, con carácter indicativo y no limitativo:

- (a) Ampliar el capital de la Sociedad emitiendo y poniendo en circulación, en una o varias veces, las acciones representativas del mismo que sean necesarias para llevar a efecto la conversión de los Bonos, y dar nueva redacción al artículo de los Estatutos Sociales relativo al capital, dejando

sin efecto la parte de dicho aumento de capital que no hubiere sido necesaria para la conversión en acciones, y solicitar la admisión a cotización de las acciones así emitidas en las Bolsas de Madrid, Barcelona, Valencia y Bilbao a través del Sistema de Interconexión Bursátil (Mercado Continuo).

- (b) Subsanan, aclarar, interpretar, precisar o complementar los acuerdos adoptados por la Junta General de Accionistas, en cuantas escrituras o documentos se otorgasen en ejecución de los mismos y, en particular, cuantos defectos, omisiones o errores, de fondo o de forma, impidieran el acceso de los acuerdos y de sus consecuencias al Registro Mercantil, Registros Oficiales de la Comisión Nacional del Mercado de Valores o cualesquiera otros."

**2º Aprobar un programa de recompra de acciones de Fomento de Construcciones y Contratas, S.A., cuya finalidad sea permitir a esta Sociedad cumplir con las obligaciones derivadas de la emisión de Bonos canjeables y la reducción del capital social de la Sociedad. Aprobar la reducción de capital de Fomento de Construcciones y Contratas, S.A., mediante la amortización de acciones propias en un importe nominal equivalente al número de nuevas acciones de la Sociedad emitidas para hacer frente a las solicitudes de canje o conversión de los titulares de los Bonos.**

**Delegación para la ejecución de estos acuerdos en el Consejo de Administración y en la Comisión Ejecutiva, con facultad de sustitución.**

De conformidad con el informe de los administradores, que ha estado a disposición de los accionistas desde la convocatoria de la Junta General:

**A. Programa de recompra de acciones de la Sociedad**

Al amparo de lo dispuesto en el artículo 3 y siguientes del Reglamento 2273/2003 de la Comisión Europea, de 22 de diciembre, aprobar un programa de recompra de acciones de la Sociedad cuyo objeto exclusivo sea (i) hacer frente a las obligaciones de entrega de acciones propias derivadas de la emisión de bonos canjeables por un importe de cuatrocientos cincuenta millones de euros (€450.000.000) aprobada por la Sociedad al amparo del acuerdo de Junta General Ordinaria de Accionistas de 18 de junio de 2008 y en virtud del acuerdo de la Comisión Ejecutiva de 6 de octubre de 2009, por delegación del Consejo de Administración de 30 de septiembre de 2009 (los "Bonos"), y (ii) la reducción del capital de la Sociedad mediante la amortización de las acciones adquiridas en virtud del programa o ya existentes en autocartera (incluidas a estos efectos las 5.090.000 acciones puestas a disposición de las Entidades Aseguradoras mediante préstamo), que se entenderán, en adelante, sujetas a los términos y condiciones del programa aprobado por la Junta General.

Como consecuencia de lo anterior, se deja sin efecto el acuerdo sexto adoptado en la Junta General de 10 de junio de 2009 en lo no ejecutado y se autoriza a la Sociedad para que, directamente o a través de cualquiera de sus sociedades filiales, y durante el plazo máximo de cinco años a partir de la fecha de celebración de la presente Junta, pueda adquirir, en cualquier momento y cuantas veces lo



estime oportuno, acciones de la Sociedad por cualquiera de los medios admitidos en Derecho, todo ello de conformidad con el artículo 75 y concordantes del TRLSA.

Igualmente se acuerda aprobar los límites o requisitos de estas adquisiciones, que serán los detallados a continuación:

- Que el valor nominal de las acciones adquiridas, sumándose a las que ya posea la Sociedad y sus sociedades filiales, no exceda, en cada momento, del diez por ciento del capital social de la Sociedad.
- Que las acciones adquiridas se hallen íntegramente desembolsadas.
- Que el precio de adquisición no sea inferior al nominal ni superior en un 20 por ciento al valor de cotización.

Las acciones objeto del programa de recompra se emplearán por la Sociedad para que pueda cumplir con sus obligaciones de canje o conversión derivadas de la emisión de Bonos y para proceder, en su caso, a la reducción del capital social de la Sociedad.

#### **B. Reducción de capital**

Reducir el capital social, mediante la amortización del número de acciones propias de la Sociedad que correspondan y que hayan sido adquiridas en virtud del programa de recompra referido en el apartado A anterior o que ya figuren en la autocartera de la Sociedad (incluidas a estos efectos las 5.090.000 acciones puestas a disposición de las Entidades Aseguradoras mediante préstamo) en un importe nominal equivalente al número de nuevas acciones emitidas por la Sociedad al objeto de hacer frente a las peticiones de canje de los Bonos.

La reducción de capital aquí acordada se llevará a cabo mediante la amortización de las acciones propias de la Sociedad que correspondan, y se realizará con cargo a reservas voluntarias, procediéndose a la dotación de una reserva por capital amortizado por el importe del valor nominal de las acciones amortizadas de la que sólo será posible disponer con los mismos requisitos que los exigidos para la reducción del capital social, en aplicación de lo previsto en el número 3 del artículo 167 del TRLSA. En consecuencia, conforme a lo señalado en dicho precepto, los acreedores de la sociedad no tendrán el derecho de oposición a que se refiere el artículo 166 del TRLSA como consecuencia de la reducción de capital acordada.

La reducción no entrañará devolución de aportaciones a los accionistas por ser la propia sociedad la titular de las acciones amortizadas. Por tanto, la finalidad de la reducción será amortizar las acciones propias.

La ejecución de la reducción de capital aquí acordada se llevará a cabo en una o varias veces, durante la vigencia del programa de recompra de acciones de la Sociedad, coincidiendo, con carácter inmediatamente posterior, con la ejecución, en cada momento, del acuerdo de aumento de capital adoptado por la Sociedad a fin de hacer frente a sus obligaciones derivadas de las solicitudes de canje o conversión por los bonistas mediante la entrega de acciones de nueva emisión.

#### **C. Delegación en el Consejo de Administración y en la Comisión Ejecutiva**

Delegar en el Consejo de Administración y en la Comisión Ejecutiva, indistintamente y con la amplitud que se requiera en Derecho, la ejecución del precedente acuerdo de reducción de capital, que deberán llevarlo a cabo en una o varias veces y durante la vigencia del programa de recompra de acciones de la Sociedad, coincidiendo, con carácter inmediatamente posterior, con la ejecución, en cada momento, del acuerdo de aumento de capital adoptado por la Sociedad a fin de hacer frente a sus obligaciones derivadas de las solicitudes de canje o conversión por los bonistas mediante la entrega de acciones de nueva emisión, realizando cuantos trámites, gestiones y autorizaciones sean precisas o exigidas por el TRLSA y demás disposiciones que sean de aplicación y, en particular, se les delega para que, dentro del plazo y los límites señalados para dicha ejecución, fijen la/s fecha/s de la/s concreta/s reducción/es del capital con ocasión de la conversión de los Bonos, señalen el importe de la reducción, haciendo coincidir el mismo con el importe nominal en el que la Sociedad aumente el capital social como consecuencia de la emisión de nuevas acciones para hacer frente a las peticiones de canje de los Bonos en cada momento, adapten el Artículo 5º de los Estatutos Sociales a la nueva cifra del capital social; soliciten la exclusión de cotización de los valores amortizados y, en general, adopten cuantos acuerdos sean precisos a los efectos de dicha amortización y consiguiente reducción de capital; designando a las personas que puedan intervenir en su formalización."

**3º Autorizar al Consejo de Administración y a la Comisión Ejecutiva, con expresas facultades de sustitución, para la interpretación, subsanación, complemento, ejecución, inscripción, sustitución de facultades y adaptación de los acuerdos que se adopten por la Junta.**

Sin perjuicio de las autorizaciones conferidas por la Junta General en los anteriores acuerdos, se delegan en el Consejo de Administración y en la Comisión Ejecutiva, con expresas facultades de sustitución a favor de cualquier Consejero, las más amplias facultades que en derecho sean necesarias para que procedan a fijar, completar, desarrollar y modificar los acuerdos adoptados por la presente Junta General, realizando cuantos trámites sean necesarios ante cualquier organismo o entidad pública o privada, así como para el cumplimiento de cuantos requisitos fueran legalmente exigibles para su ejecución, pudiendo completar y subsanar omisiones o defectos en todos los acuerdos adoptados por la Junta, otorgar cuantos documentos públicos o privados consideren necesarios o convenientes, también para la adaptación de los acuerdos adoptados a la calificación verbal o escrita del Registro Mercantil y de cualesquiera otras autoridades, funcionarios o instituciones competentes, realizando cuantos actos sean precisos o convenientes para llevarlos a buen fin y, en particular, para lograr la inscripción en el Registro Mercantil de los que sean inscribibles.

El Consejo de Administración y en la Comisión Ejecutiva quedan facultados para sustituir, en cualquier Consejero de la sociedad, todas o parte de las facultades recibidas de esta Junta General en virtud tanto de los precedentes acuerdos, como de este mismo acuerdo."

En Madrid, a 27 de octubre de 2009



**NOTA:** No se incluyen los apéndices del Informe de los Administradores (Términos y Condiciones, en inglés y castellano, así como el Reglamento del Sindicato de Bonistas) por figurar dichos documentos en otros apartados de la documentación que se pone a disposición de los accionistas de FCC.

## INFORME DE AUDITORÍA DE CUENTAS ANUALES CONSOLIDADAS

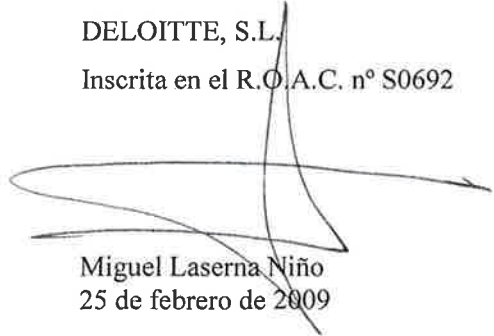
A los Accionistas de  
Fomento de Construcciones y Contratas, S.A.:

1. Hemos auditado las cuentas anuales de Fomento de Construcciones y Contratas, S.A. y Sociedades Dependientes, que comprenden el balance de situación consolidado al 31 de diciembre de 2008 y la cuenta de resultados consolidada, el estado de flujos de efectivo consolidado, el estado de cambios en el patrimonio neto consolidado y la memoria de las cuentas anuales consolidadas correspondientes al ejercicio anual terminado en dicha fecha, cuya formulación es responsabilidad de los Administradores de la Sociedad Dominante. Nuestra responsabilidad es expresar una opinión sobre las citadas cuentas anuales consolidadas en su conjunto, basada en el trabajo realizado de acuerdo con normas de auditoría generalmente aceptadas en España, que requieren el examen, mediante la realización de pruebas selectivas, de la evidencia justificativa de las cuentas anuales consolidadas y la evaluación de su presentación, de los principios contables aplicados y de las estimaciones realizadas. Nuestro trabajo no ha incluido el examen de las cuentas anuales del ejercicio 2008 de determinadas sociedades dependientes y asociadas, cuyos activos, importe neto de la cifra de negocios y resultados netos agregados, en valor absoluto, representan, respectivamente, un 36%, 24% y un 24% de los correspondientes totales consolidados. Las cuentas anuales de dichas sociedades han sido auditadas por otros auditores (véanse los Anexos I, II y III a la memoria consolidada). Nuestra opinión expresada en este informe sobre las cuentas anuales consolidadas de Fomento de Construcciones y Contratas, S.A. y Sociedades Dependientes se basa, en lo relativo a dichas sociedades, en los informes de los otros auditores.
2. De acuerdo con la legislación mercantil, los Administradores de la Sociedad Dominante presentan, a efectos comparativos, con cada una de las partidas del balance de situación, de la cuenta de resultados, del estado de flujos de efectivo, el estado de cambios en el patrimonio neto consolidado y de la memoria de cuentas anuales, además de las cifras consolidadas del ejercicio 2008, las correspondientes al ejercicio anterior. Nuestra opinión se refiere exclusivamente a las cuentas anuales consolidadas del ejercicio 2008. La presentación de la información correspondiente al ejercicio 2007 difiere de la contenida en las cuentas anuales consolidadas aprobadas para dicho ejercicio debido a la inclusión, a efectos comparativos, del estado consolidado de ingresos y gastos reconocidos, y al cambio de criterio en el método de consolidación de las sociedades participadas de gestión conjunta (véase Nota 2.a. de la memoria adjunta). Con fecha 3 de abril de 2008 emitimos nuestro informe de auditoría de las cuentas anuales consolidadas del ejercicio 2007, en el que expresamos una opinión favorable.
3. En nuestra opinión, basada en nuestra auditoría y en los informes de otros auditores mencionados en el párrafo 1 anterior, las cuentas anuales consolidadas del ejercicio 2008 adjuntas expresan, en todos los aspectos significativos, la imagen fiel del patrimonio consolidado y de la situación financiera consolidada de Fomento de Construcciones y Contratas, S.A. y Sociedades Dependientes al 31 de diciembre de 2008 y de los resultados consolidados de sus operaciones, de los cambios en el patrimonio neto consolidado y de sus flujos de efectivo consolidados correspondientes al ejercicio anual terminado en dicha fecha y contienen la información necesaria y suficiente para su interpretación y comprensión adecuada, de conformidad con las normas internacionales de información financiera adoptadas por la Unión Europea que guardan uniformidad con las aplicadas en la preparación de los estados financieros correspondientes al ejercicio anterior presentados a efectos comparativos.

4. El informe de gestión consolidado adjunto del ejercicio 2008 contiene las explicaciones que los Administradores de la Sociedad Dominante consideran oportunas sobre la situación del Grupo, la evolución de sus negocios y sobre otros asuntos y no forma parte integrante de las cuentas anuales consolidadas. Hemos verificado que la información contable que contiene el citado informe de gestión concuerda con la de las cuentas anuales consolidadas del ejercicio 2008. Nuestro trabajo como auditores se limita a la verificación del informe de gestión consolidado con el alcance mencionado en este mismo párrafo y no incluye la revisión de información distinta de la obtenida a partir de los registros contables de Fomento de Construcciones y Contratas, S.A. y Sociedades Dependientes.

DELOITTE, S.L.

Inscrita en el R.O.A.C. nº S0692



Miguel Laserna Niño  
25 de febrero de 2009