The system for the liquidation of insurance companies by the Consorcio de Compensación de Seguros (CCS)

This article looks at the key features of the Spanish system for winding-up of insurers, which is handled by the Consorcio de Compensación de Seguros (Insurance Compensation Fund, the CCS). It describes its historical background and the reasons which led to its establishment, as well as the procedures and mechanisms it uses, and the legal context in which it operates. It also includes an assessment of the period of more than 30 years over which the system has functioned and some thoughts going forward.

Miguel Ángel Cabo López
Director of Liquidation and Sanitation of Insurance Entities
Consorcio de Compensación de Seguros

1. Background

Even though Spain is not particularly prominent in the ranking as a pioneer of innovative projects, it should be pointed out that in the realm of insurance, and specifically protection for insurance creditors, we can actually say that it is. This became clear in 1984 when a unique body was set up which was unprecedented in the field of insurance, not only in Europe but internationally, and which started out with the name of the COMISIÓN LIQUIDADORA DE ENTIDADES ASEGURADORAS (*Insurance Company Liquidation Commission*, CLEA).

This body emerged provisionally and as a matter of urgency in 1984 via a Royal Decree and took the form of a mechanism essentially designed to alleviate the state of abandonment in which insurance creditors found themselves when an insurer became insolvent. The wisdom of creating it has been confirmed given its experience of over 30 years now and the liquidation of almost 300 companies.

Among the reasons for its creation the Ombudsman's Report back in 1983 is revealing. It points to numerous complaints by people who, despite holding an insurance policy, were defrauded of their right to receive compensation for the failure or disappearance of their insurer, and stresses that this sometimes gave rise to situations that were particularly serious. The report therefore urged that some sort of compensation mechanism should be set up for cases where insurers became insolvent given that there was greater justification for this to be done than in other sectors since insurance is supposed to provide protection against risk. In essence, the CLEA came into being in response to a social demand at that time and its creation was justified by a need to protect general interests.

This mechanism which, as we have already said, was set up provisionally and as a matter of urgency to alleviate problems which existed at that time, gradually gained acceptance within the insurance sector and became fully established in 1995 through provisions for it under the Law on the Regulation and Oversight of Private Insurance 30/95, whereby it was framed as a genuine mechanism for protecting insurance creditors.

On the other hand, it should be stressed that this liquidation mechanism was a new phenomenon, not only in Spanish Law, but also within a European context. This is because, although various consumer protection mechanisms had been set up via Guarantee Funds that were limited to a greater or lesser degree (Life, Non Life) and were in some cases public, while in others they were private and even sometimes mixed, there had been no precedent for regulation of a complete liquidation mechanism such as the one we describe here. This did not just satisfy the minimum provisions for a guarantee fund but went further, managing to achieve the orderly liquidation of insurers right up to the point of full exhaustion of legal and commercial proceedings. Moreover, it did so while not only protecting insurance creditors (those who without doubt benefited the most and an essential element justifying its existence by means of the mechanism known as credit purchasing), but also especially labour creditors (the second major beneficiaries, since the Law allows CCS to buy their salary and compensation credit claims) and, finally, other creditors (given that liquidation expenses are not considered in ranking credit claims).

It should be mentioned that CLEA's initial progress was not without meeting obstacles as it required a huge effort to make the various institutions and people concerned understand the characteristics and unique features of this administrative liquidation procedure, above all in judicial matters, where there was not always a peaceful coexistence. In fact the potential collision of jurisdiction went all the way to the Constitutional Court (which described it as bankruptcy proceedings through administrative action) and to the Supreme Court's disputes chamber.

On the other hand, it has to be said that lawmakers did not seek to limit the scope of the CLEA's jurisdiction to administrative liquidation and wanted to put its experience to good use to support and collaborate with the legal system in the area of bankruptcy proceedings for insurers, given that in such cases the receiver in bankruptcies must, by law, be CCS as matters now stand.

Finally, to ensure the survival of the mechanism, draw benefit from the experience of the structure created, and optimise costs, given the inter-relationship between CCS (the funding was done through it) and the CLEA, in 2002 the CLEA was extinguished under Law 44/2002 on measures to reform the financial system, and its duties, staff and assets have been assumed by CCS.

2. The scope of action of CCS as liquidator or receiver in bankruptcy

One should firstly establish the types of companies for which CCS can act as Liquidator or Receiver in Bankruptcy and then examine the circumstances in which it can be appointed as such and commended with this task.

2.1. Types of insurers

Article 14 of the legal charter of CCS, lays down that, with regard to companies, CCS shall act as liquidator of those Spanish insurance companies that are given in article 27.1 of Law 20/2015 of 14 July on the regulation, oversight and solvency of insurance and reinsurance companies (LOSSEAR) and which are subject to the jurisdiction of implementation of the State or the Regional Autonomies when liquidation of them is entrusted to it by the Minister for Economy, Industry and Competitiveness or the competent body of the Regional Government concerned.

On the other hand, article 27.1 of the LOSSEAR establishes that insurance business may only be engaged in by private companies that take one of the following legal forms:

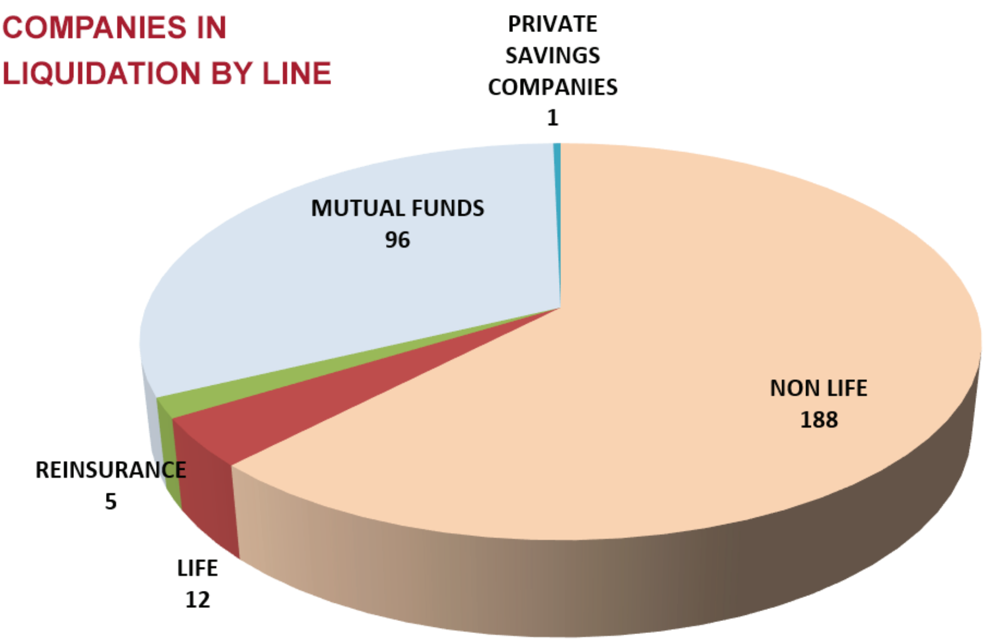
• Corporation,
• European corporation,
• Mutual insurance company,
• Cooperative,
• European cooperative,
• Mutual fund.

From the above it can be deduced that for CCS to be able to be commended with the liquidation of an insurance or reinsurance company there is a requirement that:

• It should be a private company, so those companies which adopt any form of public law as referred to in point 3 of article 27 of the LOSSEAR would be ruled out.

• It should assume one of the legal forms established in article 27.1, namely Corporation, Mutual Insurance Company, Cooperative or Mutual Fund.

• The company should be domiciled in Spain. In this case, as article 175.4 of the LOSSEAR states, liquidation of a Spanish company will also entail that of all of its subsidiaries.



Pursuant to the above, CCS could not be entrusted with the liquidation of insurers domiciled in other EU countries, even if they operate in Spain under a regime of freedom to provide services or right of establishment.

In the case of branches of insurers that are domiciled in third countries that are not EU member states, revocation of their authorisation to operate in Spain could lead to a process of liquidation of said branch's operations, while the possibility of such a liquidation process being commended to CCS raises doubts. This is because such a branch lacks its own legal personality other than that of its parent company, for which reason, in principle and in light of the literal wording of article 14 of the legal charter of CCS, it does not appear that they fit in with the definition of companies in article 27.1 of the LOSSEAR that could be liquidated by CCS.

Notwithstanding this, I consider that essential elements exist to argue in favour of the possibility of entrusting the liquidation of such branches to CCS. In this regard we have:

- Article 267 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November, known as Solvency II, which expressly establishes that Title IV on the reorganisation and winding-up of insurance undertakings shall apply to reorganisation measures and winding-up procedures concerning:

  - insurance undertakings;
  - **branches situated in the territory of the Community of third-country insurance undertakings.**

- Although the LOSSEAR transposition does not literally cover the Directive article cited, it makes a general reference through article 106.1 in the sense that such branches are to pursue their activities subject to the provisions established therein for companies that are domiciled in Spain, with the sole exclusion of what refers to activity under the regime of freedom to provide services or right of establishment, for which reason title VII of the LOSSEAR should apply to them, including section 3 of chapter II on liquidation by CCS.

- The revocation of authorisation for such branches without the dissolution of their main office would lead to a need to liquidate operations in Spain, and, should those responsible not act appropriately, this could mean, on the part of the competent authority, both intervention in the liquidation and, as may be applicable, liquidation of these by CCS. Article 171.2 of the LOSSEAR itself establishes that intervention in the liquidation of such branches to safeguard the interests of insured parties, beneficiaries and those suffering loss or damage is assumed if their main office has been dissolved, for which reason the need for such intervention in the liquidation of the branch to safeguard interests should be evident in the case of the main office not having been dissolved.

- Finally, when referring to reinsurance companies from third-party countries, article 43.2 of the ROSSEAR (Royal Decree 1060/2015 of 20 November on the regulation, oversight and solvency of insurance and reinsurance companies), expressly states that in the event of liquidation the provisions of chapter III of title VII, which discusses liquidation by CCS, would not apply to them. Nonetheless, this regulatory exclusion does not exist when this refers to insurance branches not providing reinsurance, which appears to imply that in such cases the aforementioned chapter III would apply to insurance branches, and that, therefore, their winding-up could be entrusted to CCS.

2.2. Cases where liquidation can be entrusted to CCS

Pursuant to article 14 of the Legal Statute of CCS, it can be commended with liquidation in the following circumstances:

- Simultaneously with the dissolution of the insurer if this has been initiated through administrative channels.

- If, after a company has been dissolved, it has not appointed liquidators before fifteen days have elapsed following the dissolution, or when such an appointment within this timeframe might have been made without complying with the legal and statutory requirements.

- When the liquidators fail to comply with the rules that are established in the LOSSEAR to protect insured parties and which regulate the liquidation, or else when they hinder execution of liquidation. Also when, due to the liquidation being delayed or circumstances arising which advise it, the government understands that the liquidation should be entrusted to CCS. If the liquidation is placed under official administration, any decision to commend matters to CCS shall be made subject to a prior report from the receiver.

- Via acceptance of the request for liquidation by the insurer itself, if justified grounds are noted.

Moreover, the capacity and functions proper to insolvency administration in any bankruptcy proceedings to which any insurer is subject fall to CCS on the terms provided for in bankruptcy legislation, without any need for acceptance of the assignment. Its actions in such proceedings shall not be remunerated.

In such cases CCS shall have to notify the court of the identity of the natural person who is to represent it in the exercise of its duty, to whom the rules shall apply which are contained in article 28 of Law 22/2003 of 9 July, the Bankruptcy Act, with those exceptions that are established therein.

Besides this, they shall act as a bankruptcy mediator when an insurer requests this, pursuant to article 5 bis of Law 22/2003 of 9 July, the Bankruptcy Act.

2.3. Who can entrust CCS with liquidation

Pursuant to the much mentioned article 14 of the Legal Statute, for CCS to act as liquidator of an insurer, it is a requirement that:

- Liquidation thereof is entrusted by the Minister of Economy, Industry and Competitiveness for insurers where jurisdiction for implementation falls to the State.

- Liquidation thereof is commended to it by the competent body of the relevant Regional Admistration for those insurers where jurisdiction for implementation falls to the regional governments.

- For cases of bankruptcy proceedings the appointment of CCS as receiver in bankruptcy or bankruptcy mediator should fall to the commercial court judge who has declared the bankruptcy or preliminary bankruptcy proceedings with regard to the insurer.

3. Characteristics of the system and principles in the liquidation process

3.1. Highlights of the system:

- Firstly, it should be pointed out that **what we are dealing with is not a Guarantee Fund**, in the sense that it does not guarantee a percentage or minimum amount for creditors, and neither was it designed as such. Even so, application of the so-called **liquidation surplus** means that, subject to prior amelioration of both the assets and liabilities of the insurer, CCS can acquire credit claims from insurance creditors against its funds, thereby managing to improve the percentage payable to said creditors, which on many occasions reaches as much as 100%, and do so in a shorter time. This means that there is a mechanism to protect insurance creditors which not only satisfies the standards expected of a guarantee fund, but normally improves on them.

- This is a **winding-up procedure** that is defined as a **generally applied and administrative bankruptcy procedure**, although one should make the qualification that this is not actually an administrative procedure, but instead its administrative nature arises from the fact that the liquidation is being entrusted to a public body. The liquidation begins with the assignment of the task and concludes with the extinction of the company and in the course of this a process is begun that is known as **credit purchasing** which, as appropriate, should have been assumed by the board of CCS before nine months have elapsed since the task was delegated. Credit purchasing allows insurance creditors to be offered the opportunity to have the previously decided percentage of their credit claims acquired from them (by assignment), this being chargeable against CCS funds. As we said before, it the more recent liquidation processes, this percentage has tended to be around 100%. This credit purchasing process, which is triggered by applying the so-called liquidation surplus, is precisely what determines, justifies and adds value to the liquidation process being entrusted to CCS. It can thus be claimed that the process and its benefits mean that, at least in the realm of insurance, Spain has a system capable of protecting insurance creditors.

• With respect to the subjective area of who can benefit from the credit purchasing process, it should be said that this encompasses all **insurance creditors** of the company in liquidation, of whatever kind (natural person or legal entity) and, in this case, public or private, whatever the insurance line concerned (both life and non-life) and whatever the amount of the credit claim.

Article 179 of the LOSSEAR outlines the credit claims that are considered as such for these purposes, which are:

- Those of policyholders, the insured and beneficiaries under an insurance contract and credit claims of those third parties suffering damage or loss which are referred to in article 73 of Law 50/1980 of 8 October on Insurance Contracts. Included are credit claims arising from services to repair or replace the asset suffering loss, or involving assistance or benefits in kind, which the insurer has undertaken to provide under the insurance contract.

- Those of people who have entered into contracts with insurers that are affected by the provisions of article 24 for transactions carried out without administrative authorisation, or else that have been carried out without complying with the special control measures suspending the contracting of new insurance policies or the acceptance of reinsurance and prohibiting the extension of insurance contracts executed which are respectively enshrined in article 161, letters (c) and (d).

- Credit claims satisfied by CCS pursuant to article 11.e) of the revised text of the Law on civil liability and insurance regarding motor vehicle travel, which was approved by Royal Legislative Decree 8/2004 of 29 October.

• Another aspect to highlight is the subrogation of CCS to the legal position of insurance creditor. Thus, in the case where insurance creditors of the insurer in liquidation accept the offer to buy their credit claims from CCS, assignment of such credit claims will arise, which implies subrogation of CCS to the same legal position and for the full amount of the credit claim, whatever the sum satisfied might have been.

• Another key characteristic in the liquidation processes taken on by CCS when the insurer is insolvent is that all **expenses in the liquidation process** (rent, payrolls, auditors, agents for official dealings, adjusters, lawyers, suppliers etc.) are met by the CCS out of its own funds. In this regard, the law authorises the CSS to prepay all expenses required for the liquidation process, which is an aspect that is key and essential to orderly and swift liquidation. Furthermore, so that this does not turn out to the detriment of the other creditors, the law provides that CCS does not recover these prepaid expenses until all of the other creditors have had their credit claims satisfied.

• Worth mentioning is the matter of **assignment *ex officio***, which is regulated in articles 185.5 of the LOSSEAR and 223 of the regulations thereof (ROSSEAR), as another feature of this liquidation procedure, although this is really more a case of an excellent tool for keeping the adverse impact of an insolvency liquidation process to a minimum. A hallmark of assignment of this kind is how swift it is, which, given the company's circumstance of undergoing liquidation, is vital for it to be effective. This is decided ex officio by the Directorate-General for Insurance and Pension Funds (DGSFP), public notification and the right of opposition are omitted, and publication of it in the Official State Gazette (BOE) and the Official Journal of the European Union (OJEU) is optional, without detriment to complying with the requirements regarding simultaneity and disclosure via other media.

• If the assignment culminates in success, as has occurred on numerous occasions, the benefits (mainly for policyholders or the insured) are self-evident, as they will continue to enjoy cover without having to pay a new premium, thereby avoiding the risk of not being covered which might otherwise might have arisen. It is equally of benefit to labour creditors, as normally, due to ownership of the company being passed on, workers tend to become employees of the assignee company. Lastly, the other creditors stand to benefit too in a twofold sense: firstly because this implies a reduction of liabilities, given that the assignee assumes the underwriting reserves associated with the assigned policies and secondly because this implies greater assets for the price of the assignment.

- It is worth noting the precedence the law gives to the administrative liquidation system in relation to bankruptcy procedure. Here, according to article 186 of the LOSSEAR, no insurers may be declared bankrupt which are subject to special control measure procedure. In any other circumstances, before declaring bankruptcy, the judge will have to request a report from the DGSFP or the competent supervisory body for regional governments.

- Finally, we might mention another novel aspect of the new legislation, which is the distinction made between **solvent or insolvent liquidation assignments**. Article 229 of the ROSSEAR provides that if there is observable solvency of the insurer undergoing liquidation by CCS, the latter can choose to perform the liquidation process pursuant to chapter II of title VII, whereby it is possible to pay creditors their credit claims against the company's own funds to the extent that these are liquid and callable, without having to call a meeting of creditors. In such a case, after all the credit claims and liquidation expenses have been paid, the final balance sheet will be decided, which must be ratified by the Directorate-General for Insurance and Pension Funds before corporate assets are distributed among shareholders or mutual company members.

  Notwithstanding the above, for reasons involving a lack of liquidity of the company or other circumstances that advise this, CCS is empowered to apply the proceeds of liquidation that are envisaged in article 186.1 of Law 20/2015 of 14 July. In such a case it may be compensated for credit claims acquired to the extent that the company has the necessary liquidity to do this.

3.2. Basic principles of the winding-up process

BASIC LEGAL PRINCIPLES

- REPLACEMENT OF CORPORATE BODIES
- SUBJECTION OF ALL CREDITORS TO THE LIQUIDATION PROCESS AND SUSPENSION OF ENFORCEMENT OF JUDGMENTS
- HOLDING ACCOUNTABILITY FOR THE COMPANY'S DEBTS BUT NO LIABILITY ON THE PART OF CCS FOR THIS
- EXPIRY OF DEBTS AND INTERRUPTION OF INTEREST ACCRUAL
- LIQUIDATION OF SUBSIDIARIES
- PREPAYMENT AND WAIVER (IN THE EVENT OF INSOVENCY) OF LIQUIDATION EXPENSES
- NO OBLIGATION TO INITIATE BANKRUPTCY PROCEEDINGS

In keeping with the terminology in the new LOSSEAR one should refer to:

3.2.1. General substantive norms

A. Replacement of corporate bodies

This means that from the point when CCS takes over, it replaces all of the corporate bodies of the company undergoing liquidation and so from that moment onwards there will be no place for holding more meetings or AGMs or EGMs for shareholders, or members of mutual companies or cooperatives.

The legal provision, which is essential to a swifter and more effective liquidation process, does not mean that the latter is not monitored for compliance, as it is overseen by the board of CCS itself, to be precise via a special committee known as the Executive Committee for Liquidation Activity (CDAL), which comprises four members of the board and is presided over by the General Manager of CCS. This process is moreover subject to audit by the IGAE (General State Comptroller) and the scrutiny of the State Audit Tribunal, as well as the report by an external auditor which is normally established for such processes.

On the other hand, it should be said that such replacement of the corporate bodies is expressly without prejudice to the right of the previous directors to press ahead (on their own behalf) with any administrative remedies and appeals to an administrative court that might have been initiated or filed by the company undergoing liquidation against acts of supervision by the Ministry of Economy, Industry and Competitiveness within the space of one month from publication in the Official State Gazette of the delegation to CCS of liquidation duties.

B. System of liability

Pursuant to article 184.2 of the LOSSEAR, CCS shall, where applicable, demand liability of all kinds, whether civil or criminal, which might have been incurred by whoever held positions in administering and managing the company in liquidation.

As we can see, this calling to account which the law refers to is far more extensive than is described in the proceeding for the determination of culpability in the Bankruptcy Act, both in the objective sphere (as it concerns both civil and criminal liability) and in the subjective aspect of persons concerned, and even in the temporal sense, given that there is no timeframe beyond what the jurisdictional rules establish regarding lapse or expiry.

On the other hand, item 3 of the cited article states that under no circumstances may CCS, its bodies, representatives or agents be considered as debtors, and, as is to be expected, emphasizes the distinction between the institution in liquidation (which upholds its legal personality until it is extinguished) and CCS as a public institution to which liquidation of the latter has been commended. This is of course no reason for liability not to be demanded of CCS, its bodies, representatives or agents if they should happen to act improperly in the exercise of their duties.

C. Procedure for subsidiaries

One new aspect of the new law is the procedure applied to the subsidiaries of an insurer the liquidation of which has been assigned to CCS. Thus item 4 of article 184 of the LOSSEAR establishes that if subsidiaries exist in which the majority interest is held by the insurer or reinsurer undergoing liquidation, and their corporate purpose is to manage assets on behalf of the company being liquidated, the assignment of the liquidation of the insurer or reinsurer to CCS shall entail appointment of it as the liquidator of said subsidiary companies with the replacement of all of their corporate bodies. For the purposes of recording such an appointment on the Trade Register, the administrative decision in which joint liquidation of the group of companies is stated shall suffice.

Liquidation of the subsidiary companies shall be performed pursuant to the rules in the revised text of the Corporations Act which was endorsed by Royal Legislative Decree 1/2010 of 2 July. Should a subsidiary turn out to be insolvent, CCS shall be exempt from filing for bankruptcy for it and all liquidations shall be processed in a coordinated manner.

This new system, only applicable to those subsidiaries where the circumstances pertain that are established under the law, will allow greater efficiency in liquidation processes and a major saving of both time and resources, which will redound to the benefit of creditors.

3.2.2. General procedural norms

A. Principle of generality

As the Council of State already stated in its opinion on the draft Royal Decree endorsing the regulations for the functioning of the now extinct CLEA in 1986, such liquidations entrusted to CCS can be defined as a generally applied and administrative bankruptcy procedure that is governed by the principle of par *conditio creditorum* (equal treatment of creditors), where judicial intervention is replaced by intervention of the administrative body created for such a purpose, which was the CLEA at that time. The Constitutional Court ruled along the same lines in 1988 in a judgment on the constitutional status of certain norms in the process of liquidation by the CLEA.

This principle of generality is expressly described in article 185.1 of the LOSSEAR when it states thus:

> *The liquidation having been assigned to CCS, all of the creditors shall be subject to the liquidation procedure implemented by the latter and neither the creditors nor the insurer can file for bankruptcy to be declared, without detriment to the continued processing of legal action of any kind taken in the courts against the insurer prior to the dissolution or during the liquidation period until a final and non-appealable court judgment or decision has been reached. Nevertheless, enforcement of the judgment, of any preventive attachment, judicially determined administration or other provisional remedies imposed by the court authority, or implementation of the court order to perform enforcement procedure, abbreviated judicial procedure and extra-judicial enforcement proceedings in connection with mortgaged or pledged assets on Spanish soil, as well as the enforcement of administrative orders compelling compliance, shall be left in suspense from assignment of the liquidation to CCS and during the time over which it processes liquidation procedure.*

Similarly the article cited incorporates the priority of the liquidation procedure over bankruptcy proceedings by ruling out the possibility of filing for bankruptcy by either the company itself or any creditors once the liquidation has been assigned to CCS. Only in the event of the liquidation scheme not being approved by the meeting of creditors would CCS be obliged to file for bankruptcy to be declared.

B. Suspension of interest accrual and the falling due of debts

The freezing of interest accruing and the falling due of debts are merely a logical extension of generally applied bankruptcy procedure of the kind assumed by CCS. This produces two effects:

- The first is that the insurer's outstanding debts shall be considered to have matured on the date of publication of the administrative decision to commend the liquidation to CCS in the BOE (Official State Gazette), without detriment to the corresponding discount if there is confirmation of payment of the debts before the term pre-arranged as part of the obligation.

- The second is that all of the insurer's debts shall cease to accrue interest, save in the case of loans backed by a mortgage or pledge to the extent of the respective guarantee.

C. Drawing up of an inventory, roll of shareholders and mutual company members, and balance sheet for the company

Under the new LOSSEAR the obligation which CCS had to sign these documents or check them with the previous directors or liquidators has been replaced by an obligation on said directors or liquidators to hand the documents over to CCS within the space of one month from when CCS has taken assumed the liquidation. The law envisages that in the absence of such a handover, CCS should try to draw up the documents using whatever data it might have to hand, while it cannot be charged with any liability for errors or omissions not inferred from the data made available.

On the other hand, given the special status of the liquidator, the CSS is excluded from the obligation to submit this documentation to the DGSFP or the receiver for approval (this reference by the law to the receiver is actually superfluous if we recall that article 184.4 of the LOSSEAR expressly establishes that in liquidations involving receivership, the latter shall cease when the liquidation role is assigned to CCS).

D. Early expiration of insurance contracts

Should assignment *ex officio* not be successful, not have been in full owing to a lack of offers or not have been decided through being considered unwise, it is generally appropriate to decide on early expiration of currently valid insurance contracts so as not to generate an appearance of cover that is not real. Expiration of this kind must be decided by the DGSFP or the competent body for the regional autonomies, either *ex officio* or at the request of CCS. The decision on expiration must be published in the BOE at least 15 days before it becomes effective, save for exceptional cases, and must be notified to policy holders or insured parties on an individual basis.

4. Funding the system

So as to ensure funding for the system and, above all, to put into practice all the benefits of liquidation by means of the purchase of credit claims from insurance creditors, as well as to be in a position to pay all the necessary expenses in the liquidation process, from the moment when it was set up a surcharge of 5 per mille (0.5 percent) was established on premiums collected in all lines except Life. Subsequently, in 2002, with the incorporation of the CLEA into CCS, this surcharge was set at 3 per mille. Finally, in 2009 this was reduced by 50% to 1.5 per mille.

On this point, section 3 of article 23 of the Legal Statute of CCS establishes that:

> *CCS shall be able to call upon the following resources to fulfil its liquidation functions for insurers:*
>
> *A. The surcharge used to fund liquidation duties for insurance companies, the collection and administration of which also falls to it.*
>
> *B. Those sums and assets which it recovers in exercising the credit claims of persons who have assigned their credits to it, or through early payment thereof to them.*
>
> *C. Those envisaged in paragraphs (d), (e) and (f) of section 1, which are: The proceeds and income from their assets, those from credit facilities, loans and other financial transactions that it might have arranged and any other income which it might be entitled to according to effective legislation.*

And section 4 of the same article states that:

The surcharge used to fund the liquidation functions for insurers is a tax payable on insurance contracts.

All insurance contracts executed with regard to risk located in Spain are subject to this surcharge, other than for life insurance and export credit insurance on behalf of or backed by the State. Insured provident plans shall not be subject to the surcharge, whatever contingency or contingencies they might cover.

The surcharge shall accrue when payment takes place of the relevant premium for insurance contracts that are subject to it.

The insurance companies are liable for the surcharge as taxpayers, and they must pass on the amount of this in full to policyholders, who must bear this provided that such passing on of the surcharge satisfies the provisions in this legal charter, whatever clauses might exist between them.

The premium amount represents the taxable base for the surcharge. The premium shall not be understood to include sums relating to any other surcharges which the insurance contract concerned might have to bear by dint of any legal provision that imposes this.

The rate of the surcharge used to fund liquidation duties for insurance companies shall be 1.5 per mille of the premiums referred to above.

From the above one can surmise that:

- This type of surcharge is an end tax, the collection and management of which falls to the CCS, which must perform liquidation activity separately, both financially speaking and in book-keeping terms, whereas income arising from such activity is exempt from corporate income tax.

- The contribution to the system is still borne by the non-life line alone, even though system beneficiaries might be in both non-life and life insurance classes. This lack of contribution by the life class was justified at the time (1984) by the fact that virtually all of the insolvent companies were in non-life insurance lines and therefore there was no wish to encumber the fledgling life insurance class with a surcharge. At the present time, however, it does not appear that such argumentation can be sustained, for which reason it would be desirable for the life insurance line to make some kind of contribution to funding the system in the future as well.

- Aside from what is set out in the previous paragraph, one should also point out the lack of association between contributions to the system and beneficiaries of it. This is because when establishing who the system beneficiaries are, one has to go by the principle of country of origin, which means that the only beneficiaries of the system of liquidation by CCS can be those affected by the liquidation of an insurer domiciled in Spain (wherever the place might be where they have arranged their insurance contract, i.e. in Spain, an EU member state via freedom to provide services or right of establishment, or through a branch in third countries), and this is even if the contracts made regarding risks located outside Spain might not have contributed to the funding of the system.

  On the other hand, when it comes to deciding who has to shoulder the surcharge, given its nature of being a tax, the principle of territoriality prevails, for which reason the surcharge should be paid by all insurance contracts entered into with respect to risk located in Spain other than for life insurance and export credit insurance on behalf of or backed

by the State. This is irrespective of the fact that, in the event of liquidation, if they have made the contract under freedom to provide services or right of establishment, they cannot benefit from the system.
donde hayan realizado su contrato de seguro, es decir en España, en algún país miembro de la UE a través de LPS o derecho de establecimiento, o mediante sucursal en terceros países), y ello aunque los contratos realizados sobre riesgos situados fuera de España no hayan contribuido a la financiación del sistema.

5. Some figures

To conclude this concise description of the distinctive system for liquidating insurers via CCS, without pretending to be comprehensive, some figures are provided in tables that give some indication of the effort made in carrying out such liquidation activity, while recognising the constraints on and impossibility of covering and translating into numbers the extraordinary work that has been performed by numerous professionals, some of whom have belonged to the internal structure, first of the CLEA and later of CCS, and others from outside our institution. Here one might give special mention to lawyers, actuaries, adjusters, auditors, etc., although we do so mainly to the employees of the companies undergoing liquidation themselves.

CREDIT PURCHASING FROM INSURANCE CREDITORS

YEARS	ISSUED			ACCEPTED		
	NUMBER	NOMINAL	ACTUAL	NUMBER	NOMINAL	ACTUAL
Up to 2007	762,279	744,294,036	553,551,478	652,349	622,887,781	467,462,845
2008	6,875	9,075,826	9,004,498	3,652	7,442,468	7,388,065
2009	10,101	6,607,615	6,606,283	8,625	6,064,941	6,063,798
2010	41,224	79,941,978	79,935,999	31,654	72,780,359	72,9,119
2011	13,812	23,034,928	22,833,294	8,496	20,010,133	19,924,916
2012	12,984	12,379,104	12,364,003	12,832	8,762,996	8,748,072
2013	67,910	202,862,931	202,862,545	67,165	184,649,617	184,649,319
2014	6,511	19,028,827	19,021,333	6,353	17,300,851	17,299,371
2015	3,713	15,266,599	15,246,450	2,664	3,518,438	3,507,478
2016	9,030	3,927,909	3,779,560	8,939	2,394,367	2,246,676
TOTALS	**934,439**	**1,116,419,752**	**925,205,444**	**802,729**	**945,811,952**	**790,069,658**

<table>
<tr><th colspan="4">Number of companies assigned to the CLEA
and subsequently CCS</th></tr>
<tr><td colspan="3">Liquidation</td><td>292</td></tr>
<tr><td colspan="3">Suspension of payments</td><td>2</td></tr>
<tr><td colspan="3">Failed</td><td>5</td></tr>
<tr><td colspan="3">Bankrupt</td><td>3</td></tr>
<tr><td colspan="3">TOTAL</td><td>302</td></tr>
<tr><td colspan="3">Extinguished</td><td>(287)</td></tr>
<tr><td rowspan="8">Being processed</td><td>Phase I (initial)</td><td>0</td><td rowspan="7">12</td></tr>
<tr><td>Phase II (credit purchasing)</td><td>8</td></tr>
<tr><td>Phase III (liquidation plan execution)</td><td>2</td></tr>
<tr><td>Phase IV</td><td></td></tr>
<tr><td>Final liquidation balance sheet</td><td>0</td></tr>
<tr><td>Pending distribution of corporate assets</td><td>1</td></tr>
<tr><td>Pending extinguishment</td><td>1</td></tr>
<tr><td colspan="2">Bankrupt</td><td>3</td></tr>
</table>