

## **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**