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Spain

Capital Markets

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This country-specific Q&A provides an overview of capital markets laws and regulations applicable in Spain.

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Spain: Capital Markets

1. Please briefly describe the regulatory framework and landscape of both equity and debt capital market in your jurisdiction, including the major regimes, regulators and authorities.

Being an EU Member State, the primary regulation governing capital markets in Spain comes from EU directives and implementing regulation, namely Regulation (EU) 2017/1129 (Prospectus Regulation), which addresses the prospectus requirements for public offers and admissions to trading on regulated markets; Regulation 600/2014 (MiFiR) and Regulation (EU) 596/2014, on market abuse (MAR).

In Spain, rather recently enacted Law 6/2023, March 17th, on Capital Markets and Investment Services (LMVSI), and developing and implementing regulation, Royal Decree 814/2023 on financial instruments, admission to trading, registration of negotiable securities and market infrastructures, Royal Decree 1362/2007, on transparency requirements, or Royal Decree 1066/2007, on the regime of takeover bids, among others.

Additionally, the Legislative Royal Decree 1/2010, of July 2, 2010, approving the restated Capital Companies Law (LSC), contains specific corporate provisions for listed companies in its Title XIV, such as specific faculties of the General Shareholders' Meeting, the composition and decision-making procedures of the Board of Directors, and requirements for the issuance of equity and debt instruments.

Main regulator in Spain is the Spanish stock exchange commission, the *Comisión Nacional del Mercado de Valores* or CNMV, main regulatory body, aiming to ensure transparency, proper price formation, and investor protection in the Spanish capital markets. At a lower level there are the Operating Companies (*Sociedades Rectoras*) of each of the four stock exchanges in Spain (*Bolsas de Valores de Madrid, Barcelona, Bilbao and Valencia*), which are the Spanish regulated market, and *Iberclear* as Spanish central securities depository.

Multilateral trading facilities have their own governing body and internal regulation according to EU and Spanish regulation.

2. Please briefly describe the common exemptions for securities offerings without prospectus and/or regulatory registration in your market.

The common exemptions for securities offering without prospectus and/or regulatory registration in Spain are those established detailed in article 1.4 of the Prospectus Regulation, the main and most commonly used of which are:

- a. offerings of a size not higher than EUR 8,000,000;
- b. offerings addressed solely to qualified investors;
- c. offerings to fewer than 150 natural or legal persons, excluding qualified investors;
- d. offerings of securities with a minimum denomination of EUR 100,000; or wherein each investor addressed invest at least EUR 100,000;
- e. offerings to employees, dividends to shareholders, or in the context of a merger or division, provided that a document is made available containing information on the shares, the transaction, etc.

In addition to the Prospectus Regulation exemptions, in Spain it shall be noted the following:

- offerings using mass media communications: Article 36 of the LMVSI states that in some of the exceptions provided previously, (offerings to fewer than 150 investors, minimum investment of 100,000 euros, or with a value of less than eight million euros), if they are addressed to the general public using any form of advertising communication, an entity authorized to provide investment services (ESI) must be involved in the commercialization process.
- complex hybrid instruments: Article 209 of the LMVSI stipulates that when offering complex financial instruments (of equity or debt) to retail investors, at least 50% of the issue must be allocated to qualified investors.

3. Please describe the insider trading regulations and describe what a public company would generally do to prevent any violation of such regulations.

The main regulation on insider trading is MAR, and its developing regulation.

The major prohibitions regulated under MAR include the prohibition to disclose inside information and the to engage in market manipulation. Inside information is defined in article 7 of MAR as information not disclosed to public that, if it were public, would significantly affect the prices of the financial instruments. Market manipulation implies the dissemination of false information about a financial instrument that can affect the price of that financial instrument.

The Spanish Criminal Code was amended on March 13, 2019 to regulate insider trading according to European Regulation. Its articles 285 and 285 bis forbids the abuse and revelation of inside information, respectively, carrying a prison sentence of over six years, fines of up to five years and disqualification from participating in the financial markets.

As for internal controls to prevent insider trading that can be adopted by companies, we can name the following:

- a. Chinese walls, specially from departments managing treasury stock and finance department;
- b. Due elaboration of insider lists, mandatory under MAR.
- c. Implementation of whistleblower mechanisms, also mandatory according Spanish Law 2/2023 implementing Directive (EU) 2019/1937 (Whistleblower Directive).
- d. Establish an internally policy on Rules of Conduct in the Securities Markets, detailing clear rules for all company members and employees (including directors and high officers), setting up a specific person or department to deal with all matters related to trading with securities issued by the company for which they work.
- e. Monitoring of news to identify possible leaks of inside information and implement a protocol to manage with those situations.

4. What are the key remedies available to shareholders of public companies / debt

securities holders in your market?

Remedies available to shareholders of public companies / debt securities holders in Spain are the following:

- **Corporate liability action:** shareholders may initiate a **corporate liability action** for damages against its directors, **through a General Shareholders Meeting** Should the GSM not to pass such a resolution, minority shareholders (with a reduced threshold for listed companies from 5% to 3%) may initiate such action on their own. GSM previous discussion/resolution is not required when the claim is based on a breach of the loyalty duty of directors.
- **Individual liability action:** shareholders and other third parties have the right to individually file a claim against any damages they may have suffered due to actions of directors that directly hurt their interests.
- **Challenge of corporate resolutions:** shareholders representing at least 1 ‰ (one per thousand) may challenge both GSM and Board of Directors' resolutions.

Other remedies available to shareholders are for instance their right to challenge the content of offering prospectuses (e.g., for it to contain false or misleading information) or takeover bids (e.g., due to an inadequate determination of the offering price) through filing a claim directly against the company or the administrative action that allowed the offering or the takeover bid to go through.

Question 10 describes the key minority shareholder protection mechanisms in Spain, worth considering in addition to the aforementioned remedies.

On the bondholders' side, remedies are more limited. As creditors, bondholders would be entitled to individual liability action against the company, and to challenge GSM resolutions as long as a legitimate interest is proven.

Debt security issues require setting up a bondholders' syndicate (*sindicato de obligacionistas*) through which bondholders normally are required to exercise their rights. It should be noted that the creation of the syndicate is not always mandatory, but only when the bonds' terms are governed by Spanish law and the offering takes place in Spain or are to be listed on a Spanish regulated market or MTF. Should the terms of the bonds be subject to the laws of another jurisdiction, such a body may not be required (at least not as provided in Spanish law) and therefore remedies available to bondholders would also

depend on the law and jurisdiction to which the bonds are subject.

5. Please describe the expected outlook in fund raising activities (equity and debt) in your market in 2024.

On the equity side, during 2024, IPOs have resumed on the stock exchanges (regulated market) after a hiatus since 2022. Notably, PUIG conducted the largest IPO since the Aena's one, in 2015, also encompassing a subscription public offering. Other companies, such as Tendam, Europastry, Volotea, Cirsa or Grupo Cox are planning to submit IPOs to regulated markets in the near future.

However, the rise in interest rates since 2021 and the tightening of bank credit have not led to an increase in company financing via the stock market, particularly for small and medium-sized enterprises. This matter remains a shortcoming of the Spanish stock market.

There is also significant activity in tender offers (*ofertas públicas de adquisición* or OPAs) in 2024, reaching levels resembling those of 2019 including operations involving Talgo, Arima, Applus, Netx or Prosegur Cash. The most recent and famous is the unfriendly takeover bid of BBVA over Banco Sabadell.

In the debt market, activity continues to follow recent trends, with important listed companies and banks being the most active participants. These entities manage balance sheets and issue debt to refinance existing obligations, aiming to lower costs or manage maturities.

A novelty of the new LMVSI is the inclusion of Distributed Ledger Technology (DLT) as a separate form of representing securities. With this reform, Spain has joined Germany, France and Luxembourg as the EU jurisdictions providing for a framework for the representation of securities by means of DLT, and it is expected that platforms allowing listing and trading of securities represented in DLT will be set up and functioning in the near future this increasing the options of Spanish companies to access the capital markets.

6. What are the essential requirements for listing a company in the main stock exchange(s) in your market? Please describe the simplified regime (if any) for company seeking a dual-listing in your market.

Royal Decree 814/2023 sets the listing requirements for a

Spanish company. In order to list a company, they must comply with:

I) Eligibility requirements

- a. The issuer must be a "*Sociedad Anónima*", validly incorporated and the securities that are the subject of a listing application must be represented by book-entry records and be freely transferable.
- b. The total amount of securities for which admission to trading is requested shall be at least:
 - i. EUR 6 million for shares;
 - ii. EUR 0,2 million for debt securities.
- c. *Free float*: When an application is made for the admission to trading of shares on a stock exchange, there must be a sufficient distribution of such shares prior to, or at the latest on the date of admission to trading.

A sufficient distribution shall be deemed to exist if at least 25% of the shares for which admission is sought are distributed to the public. If the market can operate adequately with a smaller percentage due to the large number of shares of the same class and their degree of distribution to the public, the CNMV may exempt issuers from this requirement.

II) Corporate governance

It will be necessary to adapt the company's bylaws and the corporate governance structure (GSM and BoD regulations, set up of Board delegated committees -Audit Committee and Appointments and Remunerations Committee) to comply with the requirements established in Spanish LSC for listed companies.

A corporate website shall also be put in place and registered in the Mercantile Registry and have a specific structure, content and information available.

III) Information requirements

The admission of securities to trading on an official secondary market in Spain require the prior fulfillment of the many information requirements, the main of which are:

- a. The submission and subsequent registration with CNMV of documents validating the issuer's and securities' adherence to the applicable legal framework.
- b. The submission and registration with the CNMV of the issuer's annual financial statements, prepared and audited in

accordance with applicable legal provisions, for the last three years. In case of a shorter financial history, this requirement may be exempted from the CNMV.

- c. The registration with the CNMV and publication of an offering (if no exemption is available -see question 2-) and/or listing prospectus.

SOCIMIs particular case

Spanish REITs or SOCIMIs (*Sociedades Cotizadas de Inversión en el Mercado Inmobiliario*), listed vehicles for the investment in the Spanish real estate markets, have some additional features, briefly:

- a. minimum share capital of €5 million;
- b. obligation to distribute dividends;
- c. 80% of their asset value must be invested in urban properties intended for rental.

Simplified regime for dual-listing companies

The simplified dual listing regime is outlined in article 1.5. j) of Prospectus Regulation, in which it is not required to issue a prospectus for companies already admitted to trading on another EU regulated market, when:

- a. they have been admitted to trading on the other market for more than 18 months;
- b. if listed after July 1, 2005, such listing was carried out using a prospectus drafted according to Directive 2003/71/EC.
- c. the issuer has fulfilled its ongoing obligations on the other relevant market.
- d. it is made available to the public in Spain a document that complies with the information requirements of a summary of the prospectus.

7. Are weighted voting rights in listed companies allowed in your market? What special rights are allowed to be reserved (if any) to certain shareholders after a company goes public?

Weighted voting rights in listed companies are allowed in Spain. The alternatives are twofold.

Creation of shares of different classes with privileged voting rights

According to Article 188 of the LSC, when issuing shares of a new class, they must not alter the proportionality between their nominal value and voting rights. To comply with this requirement, the nominal value of new shares with privileged voting rights must be significantly higher

than the one of the previously issued shares.

However, to maintain balance between the nominal value of the shares and the rights granted by them, it is necessary to establish counterweight procedures, such as granting a privileged dividend for the low-voting class of shares for them to maintain equal economic rights.

This ensures that the balance between voting rights and nominal value is preserved.

Politically, this arrangement allows a particular class of shares to hold more voting power, ensuring certain shareholders retain control. Usually, the shares with enhanced voting rights are not listed.

This approach was recently followed by Puig in its IPO, listing only the low voting class of shares.

Back in the days Abengoa had a dual voting shareholding structure and listed both classes, resulting in a significant share price differential.

Loyalty voting shares

In 2021 there were introduced in Spanish LSC the so called *loyalty shares* (*acciones de lealtad*).

To encourage shareholders to maintain their investment in listed companies for the long term, LSC allows a listed company to modify the proportion between the nominal value of the share and the voting rights attached to the shares, granting a double vote to shares held by the same shareholder for two consecutive uninterrupted years from the date of registration in the special register book.

Nevertheless, the market has perceived these types of shares as either complex, due to the difficulty in implementing the control of shares with a double vote, or of no particular use, since there has not been any listed company that has issued this kind of shares yet.

Other than a qualified vote and a privileged dividend (and other economic rights such as liquidation rights) for low voting or non-voting classes of shares, there are no special rights allowed to be reserved to certain shareholders after a company goes public. Equal treatment of all shareholders is an imperative principle of Spanish corporate law.

8. Is listing of SPAC allowed in your market? If so, please briefly describe the relevant regulations for SPAC listing.

The listing of SPACs (*Special Purpose Acquisition*

Companies) is allowed and explicitly provided for in the LMVSI and the LSC, in its recent Chapter VIII bis. Additionally, the takeover bids regulations were amended to clarify that no mandatory tender offer was required to be launched by an investor who may see himself obtaining a controlling stake of the listed company after either the acquisition/merge process or the application of the redemption mechanism.

In any case, to date, there are no precedents of listed SPACs in the Spanish capital markets, and outlook is not promising. However, Spanish companies like Codere Online and Wallbox have been listed in foreign stock exchanges via SPAC.

SPAC must put in place redemption mechanisms, such as a statutory right of separation, the issuance of redeemable shares, or the commitment to reduce the share capital and return contributions to shareholders who desire to separate from the company at any moment.

Other than that, listing a SPAC requires to comply with the same requirements as any other company.

9. Please describe the potential prospectus liabilities in your market.

Issuers are responsible for the information contained in the prospectus, and they may face both civil and criminal liability in respect of the inaccuracy of such information.

With respect to civil liability of the issuer, it relates to the content of the prospectus and is contained in article 38 of the LMVSI and articles 69 *et seq.* of Royal Decree 814/2023. These provisions forbid the spread of false information or omissions of relevant data in the prospectus, and will cause liability for all damages caused to the holders of the negotiable securities acquired as a result of such false or misleading information.

The action to demand liability shall be time-barred three years after the claimant could have become aware of the falseness or omissions in relation to the contents of the prospectus.

In relation to criminal liability, the Spanish Criminal Code includes a specific criminal offence as a special type of the felony of fraud (*estafa*), in its article 282 bis, for directors who cook economic-financial information to be included in the prospectus, being punished to imprisonment for a term of one to four years.

10. Please describe the key minority shareholder protection mechanisms in your market.

Minority shareholders have a series of specific political rights such as the right to request the call of the General Meeting (art. 168 LSC), the right to request the call of an Ordinary or Statutory General Meeting before the Commercial Registrar (art. 169 LSC), the right to intervene by a representative of the minority in the approval of the Minutes of the Meeting (art. 202 LSC), the right to request the attendance of a Notary at the General Meeting (art. 203 LSC), the right to request information and documentation, the right to challenge corporate resolutions in certain cases (art. 206 LSC), the right to request a supplement to the call of a General Meeting (art. 172 and 519 LSC), the right to appoint a director through the proportional representation right (*derecho de representación proporcional*), etc.

Minority shareholders have a right of withdrawal (art. 346 LSC) when the majority at the GSM passes any of the following resolutions:

- a. substitution or substantial amendment of the corporate purpose;
- b. creation, modification, or termination of ancillary obligations (*prestaciones accesorias*) by shareholders (note that listed companies shares may not have *prestaciones accesorias* since shares must be freely transferable);
- c. structural modifications (merge/demerge); and
- d. transfer of the corporate domicile abroad outside of Spain.

As economic rights to protect minority interests, shareholders have pre-emptive rights over any share capital increases or equity issues (such as convertible bonds) issued against cash consideration (in-kind contributions and offset of credits do not entail pre-emptive rights of minority shareholders although other protections are established to protect them from economic and political dilution) and the right to participate in the liquidation quota in proportion to their participation in the share capital.

11. What are the common types of transactions involving public companies that would require regulatory scrutiny and/or disclosure?

Among the listed company transactions that require regulatory review/authorization (other than issues of securities), the most relevant ones are:

- a. takeover bids (OPAs);

- b. merge/demerge (involving the issue of securities);
- c. scrip dividends;
- d. purchase of treasury stock under a repurchase program;
- e. control of foreign investments, which allows the Council of Ministers to suspend the authorization of investment, following a report from the Foreign Investment Board when such investment affects or may affect activities related, even if only occasionally, to the exercise of public authority;
- f. from an investor perspective, significant holdings from 5% and thresholds above should be reported to the issuer and the CNMV;
- g. directors and persons discharging managerial responsibilities (and closely associated persons) must disclose any transactions over securities of the listed company to which they are related;
- h. short positions reaching 0,1% of the affected company's shares and each 0,1% over that must be notified; and also published from 0,5% and each 0,1% over that.
- i. declare to the Foreign Investment Register a holding in the capital of Spanish companies, provided that it is made by a non-resident investor who holds or achieves, through this transaction, a holding equal to or greater than 10% of the issuer's share capital or voting rights.

12. Please describe the scope of related parties and introduce any special regulatory approval and disclosure mechanism in place for related parties' transactions.

The regime of related-party transactions in LSC is described in its article 529 viciés, considering as related parties those carried out by the company or its subsidiaries with directors, shareholders holding 10% or more of the voting rights or represented on the board of directors of the company, or with any other persons to be considered related parties in accordance with International Accounting Standards N°. 24 adopted by the European Union.

Additionally, article 231 LSC outlines a director's related party, being the close relatives to the director (spouse, parents, brothers, children...), any company in which the director either holds 10% (or more) of the share capital, or a percentage below 10% but thanks to which the director also holds a position in the management body of said

company, and the shareholders whom the director represents.

The rules for approving related-party transactions are established in Article 529 duovicies of the LSC.

If the amount or value of these transactions is equal to or superior to 10% of the total assets according to the last annual balance sheet approved by the company, the General Meeting must decide on the matter. The Board of Directors has the authority to approve all other related-party transactions, but it cannot delegate this authority. Additionally, a prior report from the audit committee is required to assess the fairness and reasonableness of these transactions.

Companies shall disclose to the public and to CNMV the related-party transactions of any company of the group surpassing the 5% of the company assets or 25 % of annual turnover.

This threshold will also cover the amounts of the transactions the listed company has entered with the same counterparty from the last twelve months.

To clarify some doubts around the related-parties regime, the CNMV published on November 15th, 2021, "*Questions and answers on the reporting regime for related-party transactions regulated in Chapter VII bis of Title XIV of the Capital Companies Act*".

13. What are the key continuing obligations of a substantial shareholder and controlling shareholder of a listed company?

Substantial and controlling shareholders have reporting obligations of significant holdings in accordance with transparency regulations.

If the controlling or substantial shareholder is also a member of the board of directors, that director must report each transaction on instruments issued by the company, in its consideration as person discharging managerial responsibilities in accordance with MAR.

Besides, the controlling shareholder will be, and the substantial shareholder could be, considered as a related party, so that the carrying out of transactions with the listed company would be subject to the approval and publicity regime outlined in Question 12.

Additionally, the Good Government Code of listed companies (CUBG), in its Recommendation n°. 2, advises listed companies with a controlling shareholder, when there are business relationships between them, to

disclose the respective activity areas or business relationships between the listed company and the controlling shareholder, as well as the mechanisms destined to solve potential of conflicts of interest.

14. What corporate actions or transactions require shareholders' approval?

The ones established in article 94.2 LSC, article 146 LSC, article 160 LSC, article 238 LSC, article 414 LSC, article 500 LSC and article 511 bis LSC (the last two, related to the General Meeting of listed companies):

- a. the creation of shares conferring some privilege over ordinary shares;
- b. acquisition of own shares or shares issued by the parent company;
- c. the approval of the annual accounts, the application of the result and the approval of the company's management;
- d. the appointment and removal of directors, liquidators and, where appropriate, auditors, as well as the exercise of corporate liability action against any of them;
- e. modification of the bylaws;
- f. the increase and reduction of the share capital;
- g. the suppression or limitation of the pre-emption right;
- h. the acquisition, disposal, or contribution of essential assets to another company. The essential nature of the asset is presumed when the amount of the transaction exceeds twenty-five per cent of the value of the assets shown in the last approved balance sheet;
- i. transformation, merger, spin-off or global transfer of assets and liabilities;
- j. the dissolution of the company;
- k. approval of the final liquidation balance;
- l. action for liability against directors;
- m. convertible bonds issue;
- n. issuing redeemable shares;
- o. the transfer to dependent entities of essential activities carried out up to that time by the company itself, even if the latter retains full control of them;
- p. transactions whose effect is equivalent to that of the liquidation of the company;
- q. the directors' remuneration policy; and
- r. any other matters determined by law or the by-laws.

15. Under what circumstances a mandatory

tender offer would be triggered? Is there any exemption commonly relied upon?

Takeover bids are mandatory in three cases:

- a. when a shareholder (or many acting in concert) gains control of the company.

A controlling stake is set at 30% of the company, or, having a lower percentage of voting rights, control will be considered as obtained if the shareholder may designate, within 24 months of its acquisition, a number of directors who represent more than half of the members of the company's board of directors.

- b. when the company resolves to delist its shares.
- c. when the listed company makes a capital reduction through the purchase of its own shares for subsequent redemption.

Mandatory takeover bids must be submitted for 100% of the company's capital, cannot be subject to any conditions and must be offered at an equitable price (*precio equitativo*), which would be the highest paid over the preceding twelve months. In addition, if delisting is to be pursued through the tender offer, the price must comply with certain additional requirements laid off in article 10.5 of Royal Decree 1066/2007, briefly, being supported by a financial report of an independent expert using various companies valuation methods.

There are some exceptions to the obligation to submit a mandatory takeover bid after getting control of the company or to delist the listed company shares:

- a. acquisitions by the deposit guarantee fund and other similar institutions;
- b. acquisitions made in accordance with the compulsory expropriation act;
- c. when all the shareholders of a target company unanimously agree to either sell or exchange their shares (or other securities with voting rights) or decide not to participate in the sale or exchange under a takeover bid;
- d. in deSPAC procedures (see [question 8](#));
- e. acquisitions or other transactions arising from the conversion or capitalization of receivables into shares of listed companies in insolvency proceedings. In these cases, the CNMV may grant a waiver, unless the refinancing agreement has been approved by the court, in which case such waiver is automatically obtained;
- f. free acquisitions *mortis causa*, as well as free

acquisitions *inter vivos*, provided that, in the latter case, the acquirer has not acquired shares or other securities that may give the right to acquire or subscribe to them in the previous 12 months and there is no agreement or agreement with the transferor;

- g. when the control of the company is acquired following a voluntary offer, as long as the initial offer was launched over 100% of the shares and it was either launched at a fair price or even if not, but it was accepted by 50% of the addressees, no mandatory tender offer for obtaining control is required;
- h. when delisting is sought, no delisting offer is required if it was launched a first voluntary takeover bid at a delisting price and reached an acceptance of 75%;
- i. when the squeeze-out and sell-out thresholds are reached;
- j. in the case of mergers, when a shareholder holds more than 30% of the votes of the listed company, provided that they have not voted in favor of the merger and a business or industrial objective is justified;
- k. any other exemption granted by CNMV.

16. Are public companies required to engage any independent directors? What are the specific requirements for a director to be considered as "independent"?

Yes, public companies in Spain are required to engage independent directors. At least two, to comply with the composition requirements of the board of directors and its mandatory delegated committees (audit committee and appointments and remunerations committee).

Under article 529 quaterdecies LSC, the audit committee of a listed company shall consist of a majority of independent directors.

Besides, under article 529 quindecies LSC, the appointments and remuneration committee shall be composed of at least two independent directors. The Chairman of the committee shall be appointed from among the independent directors who form part of it.

In addition to that, the CUBG, in its Recommendation nº. 15, considers a good practice when independent directors constitute a large majority of the board of directors and the number of executive directors is the minimum necessary, considering the complexity of the corporate group and the percentage of participation of executive directors in the capital of the company. In addition,

Recommendation nº. 17 advises that independent directors represent, at least, half of the Board of Directors or, in cases where the company has a sole shareholder or it has not a great capitalization, a 30% of the Board.

The specific requirements for a director to be considered as "independent" are laid down in article 529 duodecies of LSC, which sets the disqualifying conditions for a director to be considered independent:

- a. former employees or executive directors of group companies, unless 3 or 5 years have passed since their relationship is terminated;
- b. individuals receiving any significant benefit from the company or its group other than director's remuneration;
- c. individuals who are or were partners of the external auditor in the last 3 years;
- d. executive directors or senior managers of another company where a company executive director is an external director;
- e. individuals with significant business relationships with the company or its group in the last year;
- f. significant shareholders, executive directors, or senior managers of an entity that received donations from the company or its group in the last 3 years;
- g. spouses, close relatives, or similar relations of an executive director or senior manager;
- h. individuals not proposed for appointment or renewal by the nominations committee;
- i. individuals who have been directors for more than 12 continuous years;
- j. individuals related to a significant shareholder or represented in the board, as outlined in points a), e), f), or g).

17. What financial statements are required for a public equity offering? When do financial statements go stale? Under what accounting standards do the financial statements have to be prepared?

For a public equity offering, a prospective issuer is required to provide financial statements for the previous three fiscal years (two years in debt offerings). That requirement may be exempted by the CNMV in the case of issuers with a shorter equity story. Likewise, companies whose historical financial information is not comparable for any reason (corporate restructurings, refinancings, acquisitions processes) may be required to provide restated or proforma financial information, in

addition to the mandatory three years.

Regarding accounting standards, Spanish listed companies on regulated markets are required to use IFRS for their consolidated financial statements (as endorsed in Regulation (EC) No 1606/2002), whereas individual statements may be prepared under Spanish GAAP. Companies listed on MTFs may be permitted to use Spanish GAAP.

Furthermore, issuers must include in the prospectus information on capitalization and indebtedness that is no older than 90 days. If the issuer has published interim information, such as quarterly or semiannual reports, that information must also be included in the prospectus.

Financial statements will become stale when eighteen months have passed since the date of the registration document if the issuer includes audited interim financial statements in the document, or sixteen months if the issuer includes unaudited interim financial statements.

Despite these time frames, it is uncommon for companies to use such outdated information, because auditors cannot provide negative assurance 135 days or more after the last balance sheet date for which the auditor has performed an audit or review.

18. Please describe the key environmental, social, and governance (ESG) and sustainability requirements in your market. What are the key recent changes or potential changes?

Parent companies required to formulate consolidated financial statements must include in it a *statement on non-financial information* (*estado de información no financiera*, EINF), under the requirements of Act 11/2018.

The EINF must contemplate matters related with ESG requirements, such as the policies carried out to identify ESG risks, the due diligence procedures applied for the identification, evaluation, prevention and mitigation of those risks and their impact, verification, and control, including the measures that have been adopted against ESG risks. The results of those policies will also be included, with key indicators of the ESG requirements.

Attending to article 8 of Regulation (EU) 2020/852 (Taxonomy Regulation), the EINF must also include the proportion of the company's turnover, investments in fixed assets (CapEx) and operating expenses (OpEx) associated with environmentally sustainable economic activities.

Furthermore, the EINF shall also include a report on environmental sustainability, which will include information on the following matters:

1. **Environmental Impact:** includes information about the current and foreseeable effects of the company's activities on the environment, including health and safety aspects. This includes measures to prevent, reduce, or mitigate carbon emissions and other forms of pollution (such as noise and light pollution).
2. **Circular Economy and Waste Management:** Measures related to waste prevention, recycling, reuse, recovery, and waste disposal and the actions taken to combat food waste.
3. **Sustainable Resource Use:** Information about water consumption, raw material usage, and efforts to improve resource efficiency. This also covers direct and indirect energy consumption, energy efficiency measures, and the use of renewable energy sources.
4. **Climate Change:** Reporting on greenhouse gas emissions resulting from the company's activities, including emissions associated with the goods and services it produces. Details about adaptation measures to address climate change consequences and voluntary reduction targets for greenhouse gas emissions.
5. **Biodiversity Protection:** Measures taken to preserve or restore biodiversity, as well as any impacts caused by the company's operations in protected areas.

In the EU, in addition to the previous legal instruments, the EU Green Bonds Standard Regulation has been approved and will start applying on October 23rd, 2024. This regulation concerns about the issuance of bonds for financing investments correlated to green technologies, and efficiency on the management of resources, establishing a monitoring procedure to avoid "greenwashing".

Up until October, the ICMA's Green Bond Principles and the Social Bond Principles are the most important legal instruments in relation with debt offerings. It has been common for Spanish issuers to issue Sustainability-Linked Bonds (SLBs), which are only deemed as sustainable when complying with either the environmental objectives set out in Article 9 of Regulation (EU) 2020/852 (i.e. mitigation or adaptation of climate change, sustainable use of water, transition to a circular economy, pollution prevention and control and biodiversity protection) or the Sustainable Development Goals by United Nation related to reduction of climate change (only applicable to goals nº. 6,7,9, and 11 to 15).

19. What are the typical offering structures for issuing debt securities in your jurisdiction? Does the holding company issue debt securities directly or indirectly (by setting up a SPV)? What are the main purposes for issuing debt securities indirectly?

When issuing debt securities, SPVs may be commonly utilized to transfer a portion of financial risks from the parent company to its subsidiary. This strategic approach aims to distribute and isolate risk among various investors and mitigate exposure in the event of bankruptcy or default. Operating under the principle of 'bankruptcy remoteness,' the SPV maintains a distinct legal identity from its parent company, heightening risk isolation and protecting stakeholders' interests.

Back in the days SPV were used and incorporated in tax havens to avoid withholding on interest payments to bondholders. However, this practice was abandoned when an exemption was made to the obligation to withhold whenever instruments are admitted to trading on a regulated market of the EEA.

Relative to the listing structures, the instruments were usually quoted on the Ireland Stock Exchange Overall Index (ISEQ) and the Frankfurt Wertpapierbörse (FWB), due to the simplicity of the listing regime. The last reform of the LMV included some exceptions to the obligation of issuing a prospectus, and many of these issues are now regulated by AIAF, simplifying the process, increasing the number of listings of Spanish issuers in a domestic market.

20. Are trust structures adopted for issuing debt securities in your jurisdiction? What are the typical trustee's duties and obligations under the trust structure after the offering?

It is not common practice in the Spanish market to issue debt securities using a trust structure in domestic transactions, that is, leaving aside debt issues under a non-Spanish legislation, in which cases trust structures may be implemented.

Although the figure of the trust (*fideicomiso*) is recognized under Spanish law, its regime significantly differs from the common Anglo-Saxon scheme, and it is not suitable for debt issues. In addition, in the case of Spanish debt issues, as the case may be according to prospectus regulation, it is required to establish a syndicate of bondholders represented by a commissioner which in a way overlaps with some of the trust faculties.

21. What are the typical credit enhancement measure (guarantee, letter of credit or keep-well deed) for issuing debt securities? Please describe the factors when considering which credit enhancement structure to adopt.

In Spain, the typical credit enhancement measures are mainly personal guarantees of the parent company, agreeing to repay the debt if the issuer defaults, providing an additional layer of security.

22. What are the typical restrictive covenants in the debt securities' terms and conditions, if any, and the purposes of such restrictive covenants? What are the future development trends of such restrictive covenants in your jurisdiction?

Typical restrictive covenants are:

Negative Covenants

- a. limitations on additional debt: these covenants restrict the issuer from taking on additional debt beyond a specified threshold;
- b. negative pledges: issuers may be restricted from selling significant assets or establishing additional securities over them without bondholders' consent;
- c. limitations on dividends and distributions;
- d. limitations on equity issues: to avoid dilution in the context of hybrid instruments with an equity feature;
- e. limitations on corporate transactions: issuers may need bondholders' approval for significant corporate transactions. This protects bondholders from adverse effects of major corporate transactions.

Affirmative Covenants

- a. financial reporting requirements;
- b. maintenance of collateral or security;
- c. insurance.

Financial covenants

- a. maintaining a determined debt to equity ratio;
- b. maintaining a determined interest coverage ratio;
- c. maintaining a determined level of cash flow;
- d. maintaining a minimum level of earnings before interest and tax (EBIT);
- e. maintaining a minimum level of earnings

- before interest, tax, and depreciation (EBITD);
- f. maintaining a certain level of operating expenses.

Future Trends

Growing awareness of ESG factors is leading to covenants related to sustainability, diversity, and responsible practices for the use of proceeds. Due to the Covid-19 pandemic, there is also a reinforcement of events of default clauses related to *force majeure*.

23. In general, who is responsible for any profit/income/withholding taxes related to the payment of debt securities' interests in your jurisdiction?

Spanish Law 10/2014 establishes a special tax regime for income derived from debt instruments issued by a Spanish issuer, providing that non-resident taxpayers shall not be subject to IRNR or withholding taxes in Spain (subject to certain requirements on the debt securities and to the extent that the information procedures required under Law 10/2014 are duly fulfilled).

Other than that special regime, issuers are obliged to withhold taxes on payments of interests to natural persons at 19% rate (income on debt instruments is taxed at 19%-23% depending on the revenues), but not on payments to Spanish legal persons, who will receive interests payments free of any withholdings from the issuer, to the extent the securities are represented in book-entry form and listed on a Spanish regulated market.

The bondholder would be responsible for any other taxes related to the payment of debt securities' interests.

24. What are the main listing requirements for listing debt securities in your jurisdiction? What are the continuing obligations of the issuer after the listing?

Depending on the offering (public or not) drafting and publication of a prospectus (or a base prospectus) and obtaining approval from the CNMV would be required.

If no prospectus is required, the competent supervisor would be AIAF (Spanish debt regulated market). Listing requirements are outlined in Spanish LMVSI and Circular 1/2023 of AIAF:

- a. debt securities must be freely transferable.
- b. issuers must comply with eligibility requirements:
 - i. issuer must be validly constituted, and the debt security holders must be treated equally;
 - ii. value of the debt securities must be, at least, €200.000;
 - iii. debt securities must be represented by book-entry records.
- c. issuers shall comply with information requirements, submitting its financial statements to AIAF. In the event that the issuer is required to prepare consolidated statements, they must cover at least the last 2 financial years.

To the continuing obligations of the issuers, those are driven by the relevant EU Directives and Regulations, such as the Prospectus Regulation, Transparency Directive and implementing regulation in Spain. Main continuing obligations of a debt security issuer are publication of annual financial information; publication of biannual financial report; and compliance with market abuse regulations (publication of inside information and other relevant information).

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