

# Recent key developments in the area of Spanish financial regulation

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## Law approving urgent measures for growth, competitiveness and efficiency (Law 18/2014, published in the BOE on October 17<sup>th</sup>, 2014).

This Law derives from Royal Decree-Law 8/2014 of July 4<sup>th</sup>, 2014, and has three main pillars: promoting competitiveness and the efficient functioning of the markets; improving access to finance; and fostering employability and employment. A number of fiscal reform measures have also been brought forward.

The main measures introduced by the Law are in the areas of:

- **Financing economic activity:** A Fund for foreign investment operations by small and medium-sized enterprises has been created with a view to promote the internationalisation of small and medium-sized enterprises. The possibility of the Fund's taking temporary direct minority shareholdings is also envisaged. The Official Credit Institute (ICO in its Spanish initials) will set up a scheme to provide guarantees to multilateral bodies and international financial institutions, for a sum of up to 1.2 billion euros and for a term of one year. Local entities may also arrange new debt operations with the purpose of partially or fully repaying existing debt with the Fund, provided the conditions established in the legislation are met.
- **Promoting retail trade and market unity:** Administrative simplification and rationalisation measures have been introduced such that commercial authorisation is the competence of a single authority handling the various stages of the process from a single application. The authority will be determined by the Autonomous Regions, and the time taken to complete the process is to be shortened to three months. Certain restrictions on retail trade are also removed and opening hours deregulated.
- **Credit and debit cards:** The interchange fees applicable to transactions paid by card have been capped, with a maximum of 0.2% for debit cards and 0.3% for credit cards. For payments of less than 20 euros, a cap of 0.1% has been established for debit cards and 0.2% for credit cards. Additionally, in the case of debit cards, the maximum amount charged will be 7 cents of a euro, applicable for all payments over 35 euros. Payee firms are prohibited from passing on any additional expense or charges for the use of credit or debit cards. Payment service providers are to inform the Bank of Spain of the effective discount and interchange fees applied to card payment services.
- **Civil register:** Registrars in charge of Mercantile Register offices are granted powers to keep Civil Registers, as public officials, such

that these offices acquire the status of Civil and Mercantile Registers.

#### ■ Tax measures

- **Tax on deposits at credit institutions.** A tax of 0.03% has been established, applicable as of January 1<sup>st</sup>, 2014, the revenues of which will be collected by the Autonomous Regions in which the head office or the branch at which the taxpayers holding taxable third-party funds are located. Technical improvements have also been made to the configuration of the tax base for this tax.

- **Personal income tax.** The measures relating to personal income tax include the following:

- ✓ As of January 1<sup>st</sup>, 2014, and previous tax years that have not lapsed, the capital gain that may arise as a result of dation in payment or foreclosure proceedings affecting the taxpayer's main residence is deemed tax exempt.

- ✓ Applicable from January 1<sup>st</sup>, 2014, negative income on the savings tax base deriving from preference shares or securities received in exchange for such instruments, generated prior to January 1<sup>st</sup>, 2014, may be offset against other positive savings income or the general tax liability for the sale of assets.

- ✓ A reduced withholding rate (of 15%) when the taxpayer's total earnings from these activities in the previous year were less than 15,000 euros, provided, moreover, that this income represents more than 75% of the sum of the total earnings from economic activities and employment.

- **Tax on the increase in value of building land.** An exemption has been established for natural persons transferring ownership of their main residence by dation in payment or as a result of mortgage foreclosure proceedings.

### **Law regulating venture capital firms, other collective investment undertakings of the closed-ended type, and management companies for collective investment undertakings of the closed-ended type, amending Law 35/2003 on collective investment institutions (Law 22/2014, published in the BOE on November 13<sup>th</sup>, 2014).**

The Law considers it necessary to promote other forms of direct financing from non-banking enterprises, **including collective investment, as an increasingly important alternative.** From this viewpoint, venture capital, as an alternative investment, may be considered a particularly important source of financing for all stages of business development.

The published law also introduces a **new legal framework for venture capital firms**, incorporating **Directive 2011/61/EU** of the European Parliament and of the Council of June 8<sup>th</sup>, 2011, as regards both venture capital firms and collective investment institutions.

It also transposes **Directive 2013/14/EU** of the European Parliament and of the Council of May 21<sup>st</sup>, 2013, amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, **Directive 2009/65/EC** on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and **Directive 2011/61/EU** on Alternative Investment Fund Managers with respect to over-reliance on credit ratings.

- **Scope of application: Collective investment entities obtaining capital from a series of investors with a view to invest according to a defined investment policy, and which are considered closed in terms of their divestment policies, and which are not**

regulated by Law 35/2003, on collective investment institutions.

- **Purpose:** To regulate the **conditions under which the activity of closed-ended investment entity management companies** may be taken up and exercised in Spain, and the technical requirements these management companies are to comply with when they aim to manage and market foreign investment entities.

- **Main features of the law:**

- ✓ Relaxing the rules of the financial framework applicable to venture capital firms.
- ✓ Creation of the category of SME-venture capital firms.
- ✓ Broadening of the scope of application of the Law to collective investment entities of the closed-ended type, which may be in the form of funds or companies.
- ✓ The CNMV's administrative intervention vis-à-vis venture capital firms and collective investment undertakings of the closed-ended type has been almost completely eliminated, and it has been given powers to grant and revoke management companies' authorisation and impose penalties for serious infringements.
- ✓ The structure of Law 35/2003 of November 4<sup>th</sup>, 2003, has been maintained. This covers the regulation of open-ended collective investment institutions, and their management companies, leaving the regulation of venture capital firms and collective investment undertakings of the closed-ended type and their management companies to the new Law.
- ✓ It includes requirements applicable to both the marketing and management of these funds and managers in the European Union and Spain, and Spanish managers in the European Union.

- ✓ Another new feature is the inclusion of the role of the **depository** for venture capital funds, as is already obligatory for other categories of collective investment institution.

- ✓ It will be obligatory to have a depository when certain **thresholds** are exceeded (100 million euros or 500 million euros when the investment entities managed are unleveraged and do not have reimbursement rights that may be exercised within five years of the date of the initial investment).

Lastly, the **consolidated text of the Law regulating pension schemes and pension funds** has been amended, allowing alternative investment fund managers to manage pension funds.

### **National Securities Market Commission (CNMV) Circular on confidential statements of entities providing investment services and manual for completion of statements (Circular 3/2014, published in the BOE on November 7<sup>th</sup>, 2014).**

The CNMV considers that supervision of the rules of conduct must take place as early as possible and take a preventive approach, focusing on identifying those complex instruments in widest circulation. It therefore amends Circulars regarding confidential information to ensure the required information is more specific and is available more frequently. The manual on completing returns will be published on the supervisor's website.

The Circular's objectives are:

- **For confidential information to be available more frequently**, such that in the case of entities with a high volume of retail customers or that actively market complex instruments, a quarterly report on the placement, reception, transmission, and execution of orders has been added to the existing annual report.

- **To expand the information available** regarding the characteristics of the financial instruments marketed to retail customers, particularly those that allow their degree of complexity to be assessed.
- **To harmonise other information** that was being collected to make it comparable and facilitate its processing.

### **Law amending the Law on Share Capital Companies to improve corporate governance (Law 31/2014, published in the BOE on December 4<sup>th</sup>).**

The most significant changes to the Law on Share Capital Companies concern:

- **The General Shareholders' Meeting** with the strengthening of the meeting's role and fostering the participation of minority shareholders by reducing the necessary threshold for minority shareholders in listed companies to exercise their rights to 3%, establishing that the number of shares the articles of association may require them to hold in order to attend the General Shareholders' Meeting may not exceed one thousand.
- **Differentiated voting:** separate shareholder voting may be held on matters such as the appointment, re-election or dismissal of directors or changes to the articles of association.
- **Conflicts of interest:** the law handles conflicts of interest by establishing a specific clause suspending voting rights in the most serious cases. It also extends to joint-stock companies the rules currently envisaged for limited liability companies by establishing a presumption of infringement of the corporate interest in cases when the vote of shareholders affected by conflicts of interest was decisive in the company's resolutions being adopted.
- **Calling of meetings and adoption of resolutions:** the intention is to clarify the

information to be published in relation to the proposed resolutions and expressly establishes that the majority necessary for the valid adoption of a resolution by the General Shareholders' Meeting is a simple majority.

- **Shareholders' right to information:** a distinction is made between the legal consequences of the various forms of this right and its exercise is modulated based on a framework of good faith. In the case of listed companies, the time limits on the exercise of the right of information prior to the General Shareholders' Meeting has been extended to up to five days before the meeting is held.
- **Legal framework for the challenging of company resolutions:** the demands of business efficiency have been weighed against those of protection of minorities and legal security by adopting certain precautions concerning relatively minor defects of form and legitimisation, to avoid the abuses that can arise in practice.

The cases in which a resolution may be challenged have been brought together in a **single cancellation system** for which an expiry period of a year is provided, except in the case of resolutions contrary to public order, to which no time limits apply. In the case of listed companies, the expiry period is three months.
- **Legitimation:** in order to avoid misuse of rights, only shareholders who hold a minority shareholding of 1% in the case of unlisted companies and 0.1% in the case of listed companies are legitimated to challenge resolutions, although the articles of association may reduce these thresholds. The concept of corporate interest has been broadened such that it is understood to have been harmed when a resolution is imposed abusively by the majority.
- **Regulation of directors' remuneration:** all share capital companies' articles of association must establish a system of remuneration for

directors for their management and decision-making functions, with particular reference to the system of remuneration for directors performing executive functions.

In the case of listed companies the remuneration policy will be multiannual and will be subject to approval by the General Shareholders' Meeting. The Board will set the remuneration of each of the directors.

- **Transitional arrangements** are established for the most significant new features which may require organisational changes or amendments to the articles of association.
- **Amendment of the Securities Market Law:** the National Securities Market Commission (CNMV) is given the necessary powers to supervise some of the issues applicable to listed companies which are introduced or amended in this Law.