THE International Capital Markets Review

Seventh Edition

Editor
Jeffrey Golden

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THE INTERNATIONAL CAPITAL MARKETS REVIEW

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PREFACE

This book serves two purposes, one obvious, but the other possibly less so.

Quite obviously, and one reason for its continuing popularity, *The International Capital Markets Review* addresses the comparative law aspect of our readers' international capital markets (ICM) workload and equips them with a comparative law reference source. Globalisation and technological change mean that the transactional practice of a capital markets lawyer, wherever based, no longer enjoys the luxury, if ever it did, of focusing solely at home within the confines of a single jurisdiction. Globalisation means that fewer and fewer opportunities or challenges are truly local, and technology more and more permits a practitioner to tackle international issues.

Moreover, the client certainly may have multijurisdictional ambitions or, even if unintended, its activities often may risk multijurisdictional impact. In such cases, it would be a brave but possibly foolish counsel who assumed: 'The only law, regulation and jurisdiction that matter are my own!'

But actually the second purpose that this book aims to serve is, ironically, to equip its readers to do a better job as practitioners at home. In other words, reading the summaries of foreign lawyers, who can describe relevant foreign laws and practices, is perfectly consistent with and helpful when interpreting and giving advice about one's own law and practice.

As well as giving guidance for navigating a particular local, but, from the standpoint of the reader, foreign scene, the comparative perspectives presented by our authors present an agenda for thought, analysis and response about home jurisdiction laws and regulatory framework, thereby giving lawyers, in-house compliance officers, regulators, law students and law teachers also an opportunity to create a checklist of relevant considerations both in light of what is or may currently be required in their own jurisdiction but also as to where things there could or should best be headed (based on best practices of another jurisdiction) for the future.

Thus, an unfamiliar and still-changing legal jurisdiction abroad may raise awareness and stimulate discussion, which in turn may assist practitioners to revise concepts, practices and advice in our domestic as well as international work. Why is this so important? The simple answer is that it cannot be avoided in today's ICM practice. Just as importantly, an ICM practitioner's clients would not wish us to have a more blinkered perspective.

A week before writing this Preface, I had the honour of sharing the platform with a United Kingdom Supreme Court Justice, a distinguished Queen's Counsel and three American academics. Our topic was 'Comparative Law as an Appropriate Topic for Courts'. The others concentrated their remarks, as might have been expected, in the context of matters of constitutional law, and that gave rise to a spirited debate. I attempted to take some of the more theoretical aspects of our discussion and ground them in the specific example of the capital markets, and particularly the over-the-counter derivatives market.

Activity in that market, I said, could be characterised as truly global. More to the point, I posited that, whereas you might get varied answers if you asked a country's citizens whether they considered it appropriate for a court to take account of the experiences of other jurisdictions when considering issues of constitutional law, in my view derivatives market participants would uniformly wish courts to at least be aware of and consider relevant financial market practice beyond their jurisdictional borders and comparative jurisprudence (especially from English and New York courts, which are most often called upon to adjudicate disputes about derivatives), even when traditional approaches to contract construction as between courts in different jurisdictions may have differed.

In such cases, with so much at stake given the volumes of financial market trading on standard terms and given the complexity and technicality of many of the products and the way in which they are traded and valued, there appears to me to be a growing interest in comparative law analysis and an almost insatiable appetite among judges to know at least how experienced courts have answered similar questions.

There is no reason to think that ICM practitioners are any differently situated in this regard or less in need of or less benefited by a comparative view when facing up to the often technical and complex problems confronting them than are judges. After all, it is only human nature to wish not to be embarrassed or disadvantaged by what you do not know.

Of course, it must be recognised that there is no substitute for actual exchanges of information between lawyers from different jurisdictions directly. Ours should be an interdependent professional world. A world of shared issues and challenges, such as those posed by market regulation. A world of instant communication. A world of legal practices less constrained by jurisdictional borders. In that sense and to that end, the directory of experts and their law firms in the Appendices to this book may help identify local counterparts in potentially relevant jurisdictions (one new jurisdiction, Thailand, having been added this year). And, in that case, hopefully a pre-read of this book's content may facilitate discussions with a relevant author.

In conclusion, let me add that our authors are indeed the heroes of the stories told in the pages that follow. My admiration of our contributing experts, as I wrote in the preface to the last edition, continues. It remains too a distinct privilege to serve as their editor, and once again I shall be glad if their collective effort proves helpful to our readers when facing the challenges of their ICM practices amidst the growing interdependence of our professional world.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
October 2017

Chapter 20

SPAIN

David García-Ochoa Mayor and José María Eguía Moreno[1]

I INTRODUCTION

i Overview

In October 2017 and after 10 months of bickering, Spain finally achieved the formation of a government once more. Mr Mariano Rajoy, leader of the conservative People's Party, was elected prime minister of the Spanish government mainly thanks to 68 members of the Spanish Socialist Party who abstained in the vote. Governmental stability brought renewed confidence to investors and allowed the Spanish recovery to continue its path. The recovery is fuelled by private consumption, declining consumer price inflation, low interest rates and growing exports. Nevertheless, Spain cannot help but look with uncertainty towards the currently unknown consequences of the UK's exit from the European Union (Brexit), which will undoubtedly affect the eurozone economy.

In fact, despite Spain's progress in adjusting imbalances in recent years, high levels of public and private debt are expected to continue to weigh on consumption and investment.

ii Structure of the law

Until late 2015, the most important piece of legislation regarding the securities market in Spain was Law 24/1988, of 28 July, on the securities market (LMV), which had been amended on numerous occasions (*inter alia*, by Royal Decree 726/1989, of 23 June, on the governing bodies and members of stock exchange companies, *sociedad de bolsas* and collateral requirements, by Royal Decree 948/2001, of 3 August, on systems of investor indemnification, and by Royal Decree 1082/2012, of 13 July, on collective investment schemes). For reasons of coherence, the government decided to approve Royal Legislative Decree 4/2015, of 23 October, that is, the consolidated text of the Securities Market Act (TRLMV).

The TRLMV contains the principles governing all securities markets in Spain, and is the law into which most of the EU directives on securities markets have been incorporated. As such, capital market regulations in Spain are significantly aligned with those of other EU countries. The TRLMV establishes which securities are tradable and the way they should be represented (in particular, by book entries, and how such book entries should be made).

1 David García-Ochoa Mayor is a partner and José María Eguía Moreno is an associate at Uría Menéndez Abogados, SLP. The authors gratefully acknowledge the assistance of David López Pombo (partner at Uría Menéndez Abogados, SLP) regarding the tax aspects of this chapter.

On June 2017, the TRLMV was slightly amended pursuant to Royal Decree 11/2017, of 23 June, on urgent measures on financial matters to clarify the definition of the financial instruments that will not be considered as non-complex.

Another important piece of legislation is Royal Decree 878/2015, of 2 October, on clearing, settlement and registry of negotiable securities, on the legal regime of central securities depositories and central counterparties, and transparency requirements of issuers of securities trading in an official secondary market. It amended Law 41/1999, of 12 November, on clearing and settlement of securities systems, which transposed into Spanish law Directive 98/26/EC of the European Parliament and of the Council, of 19 May 1998, on settlement finality in payment and securities settlement systems.

In addition, on 30 June 2017, Regulation No. 2017/1129 of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market was published. Apart from repealing Directive 2003/71/EC, Regulation 2017/1129 constitutes an advance towards the consummation of the Capital Market Union, which aims at making markets work more efficiently and offering investors and savers new opportunities to put their capital to work. Regulation 2017/1129 entered into force on 20 July 2017 and will be generally applicable from 21 July 2019, except for certain exceptions to publishing a prospectus, which will apply as of the entry into force of Regulation 2017/1129. The main amendments introduced by Regulation 2017/1129 are set out below.

iii Structure of the courts

The commercial courts are the specialist first instance courts generally entrusted with hearing civil claims lodged with regard to corporate and insolvency law. Other matters (*inter alia*, those related to civil liability arising from inadequate commercialisation and placement of financial instruments) are normally heard by generalist first instance courts.

iv Regulatory authorities

The most important regulatory authority in the Spanish capital markets is the CNMV. However, the Bank of Spain, in respect of the public debt market, the Ministry of Economy and Competitiveness (regarding certain approvals and the imposition of penalties) and the departments of economy of some autonomous regions also have certain supervisory powers.

The CNMV is an entity with its own legal personality separate from that of the central government or the autonomous regions. The CNMV is governed by a board of directors made up of a chair and a vice chair (both appointed by the Council of Ministers), the Director General of the Treasury and Financial Policy, the Deputy Governor of the Bank of Spain, and three other directors appointed by the Minister of Economy and Competitiveness.

The main functions of the CNMV are to supervise and inspect the securities markets and the activity of all individuals or legal entities related thereto, as well as to impose any penalties for infringements of securities market legislation. It must ensure the transparency and efficiency of the securities markets, protect investors and disseminate any information that may be necessary for these purposes. Likewise, when so empowered by law on a case-by-case basis, it can also issue circulars containing mandatory rules for the implementation and enforcement of the regulations issued by the Council of Ministers or the Minister of Economy and Competitiveness.

The Bank of Spain has two main functions. As a member of the European System of Central Banks, it is in charge of defining and implementing the Eurosystem's monetary policy, carrying out foreign exchange transactions consistent with the provisions of Article 219 of the Treaty on the Functioning of the European Union, and holding and managing Spain's official currency reserves. Secondly, as a national central bank, the Bank of Spain is responsible for managing the Market for Public Debt Represented by Book Entries and also for issuing circulars developing regulations governing that market (among other matters).

II THE YEAR IN REVIEW

i Developments affecting debt and equity offerings

Regulation 2017/1129

As mentioned, the main amendments introduced by Regulation 2017/1129 are the following:

a the reduction of the maximum amount of the offering (in a 12-month period) excluded from the scope of application from a limit of €5 million to €1 million. In any case, Member States are allowed to the increase this limit up to €8 million;

b the increase from 10 per cent to 20 per cent of the threshold of the exception for the admission of securities already admitted in the same market, and a broadening of the scope of the exception to securities that are fungible with securities already admitted to trading;

c the addition of an exception to the offer and admission of non-equity securities issued by credit institutions involving total aggregated consideration of less than €75 million, provided that these securities are not subordinated, convertible or exchangeable and do not give the right to subscribe for or acquire other types of securities and are not linked to a derivative instrument; and

d the limitation of the exemption to admit shares resulting from conversion or exchange of other securities to 20 per cent.

Ongoing initial public offering (IPO) activity

Several companies have undergone an IPO (or an IPO process) in the Spanish capital markets in recent months. To name a few, since early 2017, the mid-sized Spanish bank Unicaja, the cash logistics company Prosegur Cash and one of the leading developers of residential property, Neinor Homes, have been listed on Spanish stock exchanges.

On another note, the government is continuing with its plans to merge Banco Mare Nostrum and Bankia. In this regard, both Banco Mare Nostrum and Bankia have called their respective shareholders' meetings on 14 September 2017 to vote on the merger. Owing to the fact that the *Fondo de Reestructuración Ordenada Bancaria* (FROB) is the ultimate controlling shareholder, holding more than 60 per cent of the share capital in each entity, it is highly likely that the merger will be approved.

Reform of the clearing, settlement and registry system of securities transactions

Royal Decree 878/2015, of 2 October, on clearing, settlement and registry of negotiable securities, on the legal regime of central securities depositories and central counterparties, and transparency requirements of issuers of securities trading in an official secondary market, has implemented the changes advanced in Law 32/2011, of 4 October.

The reform of the Spanish clearing, settlement and registry system of securities transactions is currently expected to be implemented in two phases.

The first phase, which was completed in April 2016 pursuant to the provisions of Royal Decree 878/2015, included the central counterparty (CCP) implementation and migration of the equity settlement system to the new platform. A few weeks after the reform came into force, BME Clearing, the entity operating the Central Counterparty's activities, achieved an efficiency rate of nearly 99 per cent. However, the settlement rate of bilateral trades (those not cleared by a CCP) has not yet reached the comparable rates of on-exchange business.

The second phase (scheduled to be fully implemented in September 2017) will coincide with the Spanish system's connection to T2S. At that time, fixed-income securities will be transferred to the new system. This will entail the unification of the registry and settlement approach for both equities and fixed-income instruments. Furthermore, the settlement process will be performed from that point onwards in accordance with the procedures and time periods established by T2S.

Although the market framework will not experience any modifications in relation to the trading platforms as a consequence of the reform, it will nevertheless imply some changes to trading members' systems.

For instance, there will be some modifications in the communication protocols of the trades to the trading platform to add new optional information on the clearing side. It also may be necessary to put controls in place over the activity between trading and clearing members.

ii Developments affecting derivatives, securitisations and other structured products

New securitisation legal regime introduced by the Law on Promoting Corporate Financing

The Law on Promoting Corporate Financing aims to enhance transparency, quality and simplicity in Spanish securitisation transactions.

The main novelties of the new regime are the following:

a the various existing securitisation legal provisions have been consolidated in a single legislative instrument and the previous two types of securitisation funds have been merged;

b active management of the portfolios of open-ended securitisation funds has been allowed if detailed in a fund's deed of incorporation (and, if applicable, in the prospectus);

c the securitisation fund's deed of incorporation may now provide for a 'creditors meeting', which will be entitled to pass the necessary resolutions to best defend the legitimate interests of the securitisation fund creditors (e.g., restructuring of a securitisation transaction);

d restrictions on asset transfers in favour of securitisation funds have been removed (previously, for instance, the transfer had to be full, unconditional, for the entire remaining term until maturity and not guaranteed in any manner by the originator, and assets could not be transferred by means of subscription by the fund);

e it is now possible to complete the assets portfolio of a closed-ended securitisation fund during a four-month period after its incorporation;

f the servicing and administration of securitisation fund assets can now be entrusted to a third party (previously it was legally presumed to be retained by the originator); and

g most restrictions on liability instruments have been lifted (fund securities previously required a rating and securities needed to exceed 50 per cent of the fund's liabilities).

iii Cases and dispute settlement

On 6 June 2017, and after some critical days in which depositors were said to be withdrawing €2 billion a day and its stock market value had halved, Banco Popular was declared to be 'failing or likely to fail' by the European Central Bank. The Single Resolution Board (SRB), a key element of the Banking Union and its Single Resolution Mechanism (the mission of which is to ensure the orderly resolution of failing banks, with as little impact as possible on the real economy of the EU countries), acted swiftly after this communication. In the exercise of its powers, the SRB agreed to declare Banco Popular's resolution and approved all the measures to be applied to the credit institution.

The resolution scheme places the credit institution under resolution, determining the application of pertinent resolution tools upon the entity, instructing the FROB, as executive resolution authority, to take the measures required to apply the scheme, exercising its powers.

The resolution mechanism adopted by the SRB establishes that the resolution instrument to be applied to Banco Popular is the sale of its business by means of the transfer of shares, subsequent to the write-down and conversion of the relevant capital instruments determined by the loss absorption needed to meet the resolution objectives.

The valuation from an independent expert obtained by the SRB estimated the value of the entity at minus €2 billion in the base case and minus €8.2 billion in the most stressed scenario.

That being said, the regulatory framework is based on the idea that the shareholders and creditors of an entity under resolution must be the first to bear losses in accordance with the order of priority of claims laid down in insolvency law, with the legally established exemptions. This principle aims to minimise the effects and consequences of an entity's resolution on taxpayers, and ensure shareholders and creditors bear an appropriate portion share of the resolution's costs. The clear hierarchy of claims in the context of a resolution establishes that holders of ordinary shares and holders of additional tier 1 and tier 2 capital instruments must bear the corresponding losses before any other resolution action is adopted.

Pursuant to these principles and the resolution adopted by the SRB, the FROB must write down or convert the capital instruments in combination, in this instance, with the sale of the entity's business.

In executing the powers to write down and convert, the following actions must be taken: (1) reduction of the entity's share capital to zero euros by writing down the shares currently outstanding to establish a non-distributable voluntary reserve; (2) execution of a capital increase to convert all the additional tier 1 capital instruments into share capital for an amount of €1,346,542,000; (3) reduction of share capital to zero euros by writing down the shares subscribed by way of the conversion of the additional tier 1 capital instruments and creation of a non-distributable voluntary reserve; and (4) simultaneous capital increase to convert all the tier 2 capital instruments into newly issued shares for a total amount of €684,024,000.

As explained before, the resolution tool stipulates that the sale of the business may consist of the transfer of the instruments of ownership issued by the institution under resolution. For that purpose, the FROB had to begin an open tender process to sell the entity. Upon conclusion of the process, the offer submitted by Banco Santander was the only one to fulfil the requirements for acceptance. The SRB decided to accept the offer given the effects a possible insolvency proceeding could have on the continuity of the entity's critical functions.

After all these actions, it was agreed to transfer all the shares comprising Banco Popular's share capital issued as a result of the conversion of tier 2 capital instruments in exchange for €1. This transfer was performed on behalf and in the name of the shareholders without the need to obtain their consent as per Article 25.7 of Law 11/2015.

On August 2017, the Court of Justice of the European Union admitted the Spanish Consumers' and Users' Organisation (OCU) appeal against the SRB resolution. Additionally, the OCU has also appealed the FROB's resolution and filed a criminal claim against the directors of Banco Popular.

iv Relevant tax and insolvency law

Non-resident taxpayers are subject to NRIT on Spanish-source income, and must declare and pay NRIT during the first 20 days of April, July, October and January: in these cases, NRIT is paid on income obtained during the calendar quarter immediately preceding these payment periods.

Spanish-source income would include, *inter alia*:

a interest paid by a Spanish-resident taxpayer or with respect to financing used in Spain;
b income triggered on the disposal of bonds issued by Spanish-resident persons;
c dividends distributed by Spanish-resident entities; and
d capital gains on the disposal of shares and units issued by Spanish-resident entities or undertakings for collective investments (UCIs).

Income deemed to be obtained in Spain is generally subject to NRIT at a rate of:

a 19 per cent for entities or individuals resident in an EU Member State or an EEA Member State that has an effective exchange of tax information in relation to Spain; and
b 24 per cent for NRIT taxpayers who are not resident in an EU Member State or an EEA Member State that has an effective exchange of tax information in relation to Spain.

In addition, a reduced tax rate of 19 per cent is applied on dividends, interest and capital gains deriving from the sale of assets. Each income is subject to taxation separately on a gross basis (with certain exceptions, no expenses are deductible, except for entities or individuals resident in an EU Member State under specific conditions). Normally, a withholding tax generally equal to the non-resident's final tax liability is levied on interest, dividends and capital gains on UCIs, in which case the taxpayer does not need to file an NRIT return with the Spanish tax authorities to declare and assess its NRIT liability.

A brief overview of the Spanish taxation applicable to non-resident investors is provided below. Please note that this refers to individuals or entities not resident in Spain for tax purposes, and not acting through a permanent establishment located in Spain.

Capital gains on the transfer of interests in Spanish corporations or UCIs

In general, capital gains obtained in Spain by a non-resident taxpayer from the transfer of interests in Spanish corporations or UCIs will be taxed under NRIT at a rate of 19 per cent. No withholding tax is levied on capital gains, except for those related to an investment in a Spanish UCI.

Domestic legislation provides for an exemption from tax for the benefit of residents of countries that have entered into a convention for the avoidance of double taxation (CDT) with Spain, and that includes an exchange-of-information clause in the case of transfers of shares of Spanish companies or reimbursements of units in a UCI that are carried out in a Spanish official secondary securities market.

In addition, EU residents are entitled to an exemption on capital gains obtained upon disposal of shares, provided that the following conditions are met:

a most of the value of the assets of the company to which the shares belong does not derive (directly or indirectly) of real estate located in Spain;

b in the case of a non-resident individual, he or she has not held a direct or indirect interest of at least 25 per cent in the relevant Spanish company's capital or net equity during the 12 months preceding the transfer;

c in the case of non-resident entities, the transfer fulfils the requirements of Article 21 of the CIT Law (which are highly complex and must be analysed on a case-by-case basis); and

d the capital gain is not obtained through a tax haven jurisdiction or a permanent establishment located in a country or jurisdiction that is not an EU Member State.

Finally, most CDTs provide for an exemption from capital gains tax, except when the assets are allocated to a Spanish permanent establishment or when the assets are Spanish real property (also generally including for this purpose any capital gains from the transfer of Spanish 'land-rich' companies, with some exceptions). In some cases, when the assets consist of shares in a Spanish-resident entity, the exemption is conditional on the fact that the holding is below significant participation thresholds (below 15 or 25 per cent).

Interest and dividends

In general, interest and dividends obtained in Spain by a non-resident taxpayer will be taxed under NRIT at a rate of 19 per cent, and will be subject to withholding tax on account of NRIT.

Domestic rules provide certain tax exemptions on income obtained by non-residents (e.g., income derived from Spanish public debt or listed preference participations and debt instruments meeting certain requirements, or interest accrued on non-residents' bank accounts). In particular, in the case of preference participations and debt securities issued under the first additional provision of Law 10/2014, of 26 June (which can be issued not only by banks or listed companies, but also by any Spanish corporation, provided the securities are listed in a regulated market, an MTF or an organised market, among other requirements), non-resident taxpayers will not be subject to taxation or withholding in Spain.

In addition, EU residents are entitled to an exemption on interest obtained in Spain, provided that interest is not obtained through a tax haven jurisdiction or a permanent establishment located in Spain or in a country or jurisdiction that is not an EU Member State.

Regarding dividends, under the Parent-Subsidiary Directive no Spanish withholding taxes should be levied on the dividends distributed by a Spanish subsidiary to its EU parent company (and EEA parent companies under additional specific conditions) to the extent that, in brief:

a the EU parent company maintains a direct holding in the capital of the Spanish subsidiary of at least 5 per cent (or, alternatively, the acquisition basis of the interest exceeds €20 million) uninterruptedly during the year prior to the date on which the distributed profit is due;

b the EU parent company is incorporated under the laws of an EU Member State (other than a tax haven jurisdiction) and is subject to corporate income tax in a Member State, without the possibility of being exempt; and

c the distributed dividends do not derive from the subsidiary's liquidation.

The Spanish implementation of the Parent-Subsidiary Directive includes an anti-abuse provision, by virtue of which the withholding tax exemption will not be applicable where the majority of the voting rights of the parent company are held directly or indirectly by individuals or entities not resident in the EU, except when the EU parent company evidences that it has been incorporated and operates for valid economic and substantive business reasons. The EU Parent-Subsidiary exemption may also apply to parent companies resident in an EEA Member State that has ratified an effective exchange of tax information agreement with Spain under similar conditions.

Finally, non-residents that are resident in a country that has entered into a CDT with Spain will be entitled to apply the reduced tax rates or exemption provided in the relevant CDT (CDTs usually establish rates ranging from zero to 15 per cent on interest and dividends).

Insolvency law

The most important piece of legislation on this matter in Spain is Law 22/2003, of 9 July, on insolvency, which has been amended on a number of occasions in the past few years to facilitate the refinancing processes undertaken by Spanish companies, as well as their general recapitalisation.

One of the main particularities of this Law is that, in the case of issuers of securities or derivative instruments traded in an official secondary market, the insolvency trustee will either be a CNMV staff expert or a person designated by it fulfilling certain requirements (basically, an economist or auditor with a certain specialisation and experience, a Big Four firm or other audit companies).

However, other pieces of legislation may also be relevant in an insolvency context. Article 88 of the TRLMV allows the CNMV to suspend trading of a financial instrument in Spanish official secondary markets when special circumstances occur that may disrupt the usual course of transactions over said financial instrument or when such a measure is advisable to protect investors. The CNMV generally resorts to this faculty to suspend trading of a listed company when a petition for insolvency is filed.

v Role of exchanges and CCPs

Secondary markets and MTFs

Under Spanish law, in the area of securities markets, an initial and basic distinction must be made between the primary and secondary markets. In the primary market (also known as the issuance market), issuers put into circulation (i.e., issue) securities, which are subscribed by investors, either directly or through financial intermediaries. Conversely, in the secondary markets, securities that have been previously issued are traded. Secondary markets offer liquidity to those securities that have already been issued in the primary market and facilitate their subscription, since the existence of the secondary markets allows investors to sell the relevant securities in an uncomplicated manner. The official secondary markets are also known as Regulated Markets and mainly include:

a the stock exchanges;

b the Market for Public Debt Represented by Book Entries;
c futures and options and other derivative markets, notwithstanding the underlying assets (either financial or non-financial); and
d the AIAF Fixed Income Market.

There are currently four stock exchanges in Spain, all subject to the supervision of the CNMV. These are established in Madrid, Barcelona, Bilbao and Valencia; there is also the 'interconnection system between stock exchanges' (SIBE). Only those securities previously admitted to listing on at least two of the Spanish stock exchanges are traded on the SIBE, provided that the prior authorisation of the CNMV is obtained.

In addition to the official secondary markets, MTFs are increasingly relevant. An MTF is a multilateral system operated by an investment firm or a market operator that brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in an agreement in accordance with the LMV. Examples of Spanish MTFs are:
a the Alternative Stock Market (MAB), implemented in 2006 as a less-regulated market for SICAVs (open-ended collective investment companies) and stocks with small market capitalisation; and
b the Alternative Fixed-Income Market (MARF), implemented in 2013 as an alternative source of funding for medium-sized companies with positive business prospects and usually unlisted shares.

Spain's third trading environment concerns systematic internalisers (SIs). SIs are investment services firms and credit institutions that execute, through the regulated market or a multilateral trading system, on their own account, client orders for shares listed on regulated markets in an organised, frequent and systematic way. SI transactions are subject to compliance with specific requirements on the transparency and size of transactions.

CCPs

In the past, the only Spanish markets that provided central counterparty services were the futures and options market, with the former Spanish Financial Futures and Options Exchange (MEFF) acting as both an official secondary market and as a CCP. After the amendments to the LMV introduced by Law 44/2002, it was made possible to incorporate CCP companies to provide a counterparty to one or more securities traded in the different securities markets.

Given the need to separate trading and clearing activities pursuant to the European Market Infrastructure Regulation, the clearing activity carried out by MEFF is now carried out by BME Clearing, the first and only CCP incorporated to date in Spain. In this regard, BME Clearing's activities, currently covering financial derivatives, public debt repos and electricity derivatives, will extend to cash markets (equities and fixed income) in the context of the reform of the clearing and settlement activities in Spain referred to above.

The clearing activity is carried out through a 'subjective novation', whereby the CCP intervenes as a party to the contracts traded in the relevant market (as purchaser in relation to the selling party and as seller in relation to the purchasing party), guaranteeing full compliance with the relevant contract.

vi Other strategic considerations

Structural reforms: credit institutions

The new institutional and legal framework for the Spanish banking system is in its final stages of implementation under a process that commenced in 2012, expanded in 2013 and is likely to continue for the next few years.

One notable recent reform is Royal Decree 84/2015, of 13 February, implementing Law 10/2014, of 26 June, on the organisation, supervision and solvency of credit institutions, whose purpose is to continue adapting the Spanish legal system to the new provisions of Directive 2013/36/EU (CRD IV) and Regulation (EU) No. 575/2013 (CRR), as well as the new provisions included in Regulation (EU) No. 1024/2013 with regard to the Single Supervisory Mechanism.

III OUTLOOK AND CONCLUSIONS

Spain's recovery is projected to remain stable in 2017 and 2018, while moderating its pace of growth as, among other factors, the boost to exports eases owing to a strong euro. Nevertheless, sustained job creation is supporting private consumption, thus allowing the budget deficit to maintain its decreasing trend.

Finally, Spain's current major challenge appears to be the Catalonian referendum on independence of 1 October 2017 by virtue of a law passed by the Catalan parliament. Although said law was quickly suspended by the Spanish Constitutional Court, Catalan nationalists continue to push ahead with their secessionist plans. We will have to await the outcome to see how this national problem ends but it is true that the situation requires a consensual solution between all those involved, that may eventually lead to a constitutional reform process.

Appendix 1

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