

# Draft Royal Decree amending Royal Decree 1066/2007 of 27 July on the takeover bid framework, to extend its application to multilateral trading facilities

On 8 January 2025, the Draft Royal Decree that extends the **application of the takeover bids framework** to companies with **shares admitted to trading on multilateral trading facilities (“MTFs”)** (“Draft”) was published for public consultation. The new measure – that has been in the Securities Markets and Investment Services Law since April 2023 – will enter into force after this remaining regulatory step is completed, which is expected to happen **in early 2025**.

Although the final wording may change, according to the Draft, a new chapter will be added to Royal Decree 1066/2007 (“RDOPAs”)<sup>1</sup> to develop the specific features needed to adapt the takeover bid framework to the characteristics of companies listed on multilateral trading facilities, including the following:

- (i) four new **exemptions from the obligation to launch a takeover bid** upon gaining control, including the acquisition of a company stake of less than 50% with voting rights;
- (ii) an **extension of the deadline for reducing the stake or launching a takeover bid** in the event of an indirect or unexpected takeover (*tomas de control indirectas o sobrevenidas*);
- (iii) the removal of CNMV supervision of the **independent expert’s report in delisting bids**;
- (iv) a simplified **delisting process when initiated at the issuer’s request**; and
- (v) more **flexibility in how the price guarantee for the takeover bid is constituted or evidenced**.

The Draft provides that the new framework will apply to all takeover bids announced after the Royal Decree enters into force, which, according to the Draft, is expected to happen 20 days after the Royal Decree is published in the Spanish State Gazette.

We lay out the main aspects of the proposal below and a loose English translation of the Draft is available [here](#).

## (A) SCOPE OF APPLICATION

The new framework will apply mainly to takeover bids for companies (i) whose shares are incorporated in a Spanish MTF, (ii) that are domiciled in Spain, and (iii) whose shares are not simultaneously admitted to trading on the Spanish Stock Exchanges.

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<sup>1</sup> With five new provisions (articles 51 to 55).

It will also apply, in specific cases, to companies that are incorporated in a Spanish MTF but not domiciled in Spain.

With regard to any issue that new Chapter XII does not address, the general framework for takeover bids for companies listed on the Spanish stock exchange will apply<sup>2</sup>.

## **(B) EXCEPTIONS TO INDIRECT AND UNEXPECTED TAKEOVERS**

In addition to the exceptions in article 8 of the RDOPAs (unanimity, capitalisation of credits, voluntary takeover bids made at an equitable price or accepted by the majority, etc.), the following others are introduced:

- The acquisition of a percentage of voting rights of 30% or more, but less than 50% (which in practice raises the control threshold for a mandatory takeover bid from 30% to 50% for companies incorporated in an MTF).
- The appointment of more than half of the directors, provided the shareholder does hold more than 50% of the voting rights.
- The acquisition of control by subscribing shares in a capital increase disapplying the shareholders' pre-emption rights ("PSR") or by capitalisation, conversion or exchange of other securities issued disapplying the PSR, provided a 75% majority of the shareholders at the general meeting support the resolution to increase the share capital or issue the securities subject to capitalisation, conversion or exchange. In addition, the proposed resolution must state, among other minimum requirements, that the acquisition of control does not require a mandatory takeover bid. This exception needs to be validated by the Spanish Securities Market Commission (*Comisión Nacional del Mercado de Valores*) ("CNMV") before it is applied.

In cases of indirect or unexpected takeovers (*tomas de control indirectas o sobrevenidas*) of such companies, the three-month deadline in article 7 of the RDOPAs for the shareholder to make a mandatory takeover bid or to dispose of the share exceeding 50% with voting rights is extended to 12 months.

## **(C) VALUATION REPORT**

An independent expert report will be required to justify the price of a delisting takeover bid for companies incorporated in a Spanish MTF. The expert the bidder appoints must be registered in a special register to be set up by the MTF<sup>3</sup>. The CNMV will play no part in the review and supervision of the valuation report.

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<sup>2</sup> This reference to the general framework means that takeover bids for companies with shares admitted to trading on MTFs are subject, among other things, to the following matters envisaged for listed companies: CNMV authorisation for the takeover bid; equitable price, passivity rule and defences against takeover bids; modification, withdrawal and termination of the effects of the bid; bid acceptance and transaction settlement; competing bid framework; squeeze-out; or prospectus content.

<sup>3</sup> The register must be set up within six months. Until then, the reports must be prepared by an expert who has already issued a valuation report in a CNMV-authorized takeover bid and that has informed the relevant MTF of his or her wish to be included in the register.

**(D) EXCEPTIONS TO DELISTING TAKEOVER BIDS**

In addition to the cases set out in article 11 RDOPAs, no delisting takeover bid is required when a 75% majority of the shareholders at the general meeting support the delisting resolution. In these cases, a cash liquidity mechanism must be provided to shareholders at a price that is justified in accordance with a valuation report issued by an independent expert that meets the requirements referred to in section (C) above.

The delisting framework does not apply either when moving to an “SME growth market” (BME Growth) or to a regulated market (from any MTF, including an “SME growth market”).

**(E) GUARANTEES**

In addition to bank guarantees (*avales*) or cash deposits, bidders whose takeover bids (either in whole or in part) involve cash consideration may provide documentation evidencing that they have secured a loan or a credit line to finance the payment of the consideration, as security for their payment obligations under the takeover bid.

**(F) TEMPORARY SCOPE OF APPLICATION**

The new framework will apply to takeover bids announced after the new Royal Decree enters into force, which will take place 20 days after it is published in the Spanish State Gazette.

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