
THE ASSET MANAGEMENT REVIEW

FIFTH EDITION

EDITOR
PAUL DICKSON

LAW BUSINESS RESEARCH

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Fifth Edition

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EDITOR'S PREFACE

While the global financial crisis of 2007–2008 may feel like an increasingly distant memory, its effects continue to be felt across the whole of the financial world. Despite significant improvements in the global economic landscape in the intervening years, global growth was hampered in 2015 by various geopolitical factors, including a slowdown of economic activity in China and weakening energy and commodity prices. In the UK, the prospect of the referendum on membership of the EU in June 2016 created an uncertain political environment. The impact of the UK's decision to leave the EU is expected to be significant, in particular for the UK and across the European continent but also more widely.

Nevertheless, the importance of the asset management industry continues to grow. Nowhere is this truer than in the context of pensions, as the global population becomes larger, older and richer, and government initiatives to encourage independent pension provision continue. By way of example, in the UK, changes to the rules governing what retirees can do with their pension benefits are creating new opportunities and challenges for discretionary managers and product providers.

The activities of the financial services industry remain squarely in the public and regulatory eye, and the consequences of this focus are manifest in ongoing regulatory attention around the globe. Regulators are continuing to seek to address perceived systemic risks and preserve market stability through regulation. In Europe, major changes to the regulatory landscape for investment funds were introduced by the Alternative Investment Fund Managers Directive, which has applied in full since July 2014, and more recently by certain changes to the UCITS regime. The next key regulatory milestone in the investment business space – the revisions to the Markets in Financial Instruments package – has been delayed by a year, reflecting the challenges for implementation of such significant and wide-reaching regulatory reforms. In the UK, the Financial Conduct Authority continues to focus on the asset management industry. In 2015, a market review of financial advice was completed, and a wide-ranging market study on the industry and the charges it levies on investors was launched.

It is not only regulators who continue to place additional demands on the financial services industry in the wake of the financial crisis; the need to rebuild trust has led investors to call for greater transparency around investments and risk management from those managing

their funds. Industry bodies have noted further moves away from active management into passive strategies, illustrating the ongoing pressure on management costs. The increasing impact of technology on the industry has also been observed, including developments such as 'smart beta' management strategies and the nascent emergence of automated (or 'robo') advice services.

This continues to be a period of change and uncertainty for the asset management industry, as funds and managers act to comply with regulatory developments and investor requirements and adapt to the changing geopolitical landscape. Although the challenges of regulatory scrutiny and difficult market conditions remain, a return of risk appetite has also evidenced itself. The industry is not in the clear but, prone as it is to innovation and ingenuity, it seems well placed to navigate this challenging and rapidly shifting environment.

The publication of the fifth edition of *The Asset Management Review* is a significant achievement, which would not have been possible without the involvement of the many lawyers and law firms who have contributed their time, knowledge and experience to the book. I would also like to thank Gideon Robertson and his team at Law Business Research for all their efforts in bringing this edition into being.

The world of asset management is increasingly complex, but it is hoped that the fifth edition of *The Asset Management Review* will be a useful and practical companion as we face the challenges and opportunities of the coming year.

Paul Dickson

Slaughter and May

London

September 2016

Chapter 26

SPAIN

Juan Carlos Machuca Siguero and Anna Viñas Miquel¹

I OVERVIEW OF RECENT ACTIVITY

The asset management industry in Spain is comparatively young. Nevertheless, during approximately three decades of activity, it has undergone a remarkable development process to become a highly professional and efficient market.

The downturn in the financial markets following the global credit crisis (and, in particular, the European sovereign debt crisis) in 2007–2008 severely affected Spanish collective investment schemes and pension funds and, generally, the asset management industry in Spain. The recovery started in 2013 and strengthened in 2014 and the first half of 2015. At the macroeconomic level, Spain's GDP grew by 3.2 per cent in 2015, driven primarily by domestic demand, strong job creation and increased access to credit. Additionally, according to the latest data available from the Spanish Institute of Statistics (published in late May 2016), the employment rate has been growing since the second quarter of 2014, reaching inter-annual growth of 3.2 per cent in the first quarter of 2016. Spain nevertheless continues to have one of the highest unemployment rates in the EU.

At the end of 2015 and in the first half of 2016, the growth of the Spanish economy slowed, mainly due to global uncertainty, such as the downturn in China, declining oil prices and domestic and international political instability. This impacted Spanish stock markets, leading to negative year-to-date returns in the Ibx 35 of 13.18 and significant volatility.²

On the regulatory side, the authorities have adopted a number of initiatives that purport to foster and ease economic activity as well as to develop and adapt the asset management industry in Spain to EU standards. It is worth noting, *inter alia*, Royal Legislative Decree 4/2015 of 23 October, approving the restated text of the Securities Market Law (the Securities Market Law), the purpose of which is to organise and codify some of the regulations approved

1 Juan Carlos Machuca Siguero is a partner and Anna Viñas Miquel is an associate at Uría Menéndez Abogados, SLP.

2 Based on data available as at 11 July 2016.

in the area of capital markets area or Law 20/2015, of 14 July, concerning the organisation, supervision and solvency of insurance and reinsurance companies, which incorporates EU insurance law and regulates and supervises private insurance and reinsurance activities.

In addition, other major legislative initiatives, such as Law 11/2015, of 18 June, on Recovery and Resolution of Credit Entities and Investment Firms (Law 11/2015), have had an impact on the asset management sector in Spain.

On the investor side, the data for 2015 showed that the assets under management of the collective investment schemes increased by 16.6 per cent, whereas the assets under management by the pension funds increased by only 4 per cent.³ Forecasts for 2016 point to continued economic growth, although the current widespread uncertainty in European and Spanish politics (particularly due to the UK referendum to leave the EU and Spain's lack of a government following the 2016 general elections)⁴ may negatively affect these estimates and the growth rate.

II GENERAL INTRODUCTION TO REGULATORY FRAMEWORK

The Spanish asset management industry is not regulated by all-encompassing legislation applicable across the board although, as discussed, the recently restated text of the Securities Market Law seeks to codify and organise some of the regulations in this field. The existing dispersion in regulations is due, *inter alia*, to the fact that asset management activities can be carried out in Spain by a wide array of different entities, each of which requires specific regulation. Before giving a brief overview of the rather fragmented asset management regulatory framework in Spain, it is worth noting the remarkable pace of its evolution during the past few years, and the increasing number of amendments to the relatively new laws and regulations in place.

Below is a brief summary of the main regulations applicable to the asset management industry in Spain.

i Investment firms

Such entities, whose main activity is rendering investment services over financial instruments to third parties on a professional basis, are primarily regulated under the Securities Market Law⁵ and are subject to the supervision of the Spanish Securities Exchange Commission (CNMV).

3 Information made available to the public by the Spanish Association of Collective Investment Schemes and Pension Funds (INVERCO): www.inverco.es/archivosdb/c89-ahorro-financiero-de-las-familias-iics-y-fp-2015.pdf.

4 Information as of 21 July 2016.

5 Secondary regulation is usually delivered by means of royal decrees, orders issued by the Ministry of Economy and Competitiveness as well as circulars issued by the CNMV covering, *inter alia*, solvency, reserved information or financial disclosures and annual accounts of investment firms. For instance, the general regime on investment firms is developed by Royal Decree 217/2008, as amended by Royal Decree 358/2015.

ii Collective investment schemes

Collective investment in Spain is carried out by means of two different types of scheme, depending on the nature of the commitment assumed by the relevant investors: open-ended schemes, which allow investors to apply for the redemption of their investment against the assets of the scheme at any time, or with short notice; and closed-ended schemes, where the investor assumes an irrevocable commitment and may not apply for redemption until a certain deadline.

The regulation of these two categories in Spain has undergone a change driven, principally, by two EU Directives and their transposition into Spanish Law: the UCITS Directive,⁶ implemented in Spain by means of Law 31/2011, which amended Law 35/2003, of 4 November, on Collective Investment Schemes (CIS Law); and the AIFMD,⁷ as transposed in Spain by means of the Law 22/2014, of 12 November, on Venture Capital Entities, other Closed-Ended Collective Investment Undertakings and their Management Companies (Law 22/2014). These categories are regulated in Spain as follows:

- a* Spanish open-ended collective investment schemes and their management companies and depositaries are regulated at a general level under the CIS Law and by Royal Decree 1082/2012, by which the regulation developing the CIS law is approved (such regulation as amended by, *inter alia*, the Royal Decrees 877/2015 and 83/2015);⁸ and
- b* Spanish venture capital entities and closed-ended collective investment schemes as well as their management companies, are subject to Law 22/2014.⁹

Collective investment undertakings that do not qualify as UCITS should be considered AIFs. Therefore, AIFs may take the form of closed-ended schemes, open-ended schemes, private-equity firms, venture-capital entities (VCEs) and other minority entities. Depending on the form they take, AIFs may be managed by open-ended schemes management company (SGIIC) or closed-ended schemes management companies (SGEIC).

The entities referred to above are subject to the supervision of the CNMV.

iii Pension funds

Pension funds and their management and depositary companies are regulated by Royal Legislative Decree 1/2002 as amended by, *inter alia*, Law 22/2014, (Pension Funds Law) and its developing regulation, including Royal Decree 304/2004, as amended by Royal Decree 681/2014 (Pension Funds Regulations).

Both pension funds and their management companies are supervised by the Ministry of Economy and Competitiveness and the General Directorate of Insurance and Pension Funds (DGSFP), which is the same regulator supervising insurance companies.

6 Directive 2009/65/EU on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

7 EU Directive 2011/61/EU on Alternative Investment Fund Managers.

8 It is worth noting, nonetheless, that free IICs and IICs of free IICs are mainly regulated by Royal Decree 1082/2012.

9 In addition, Law 22/2014 expressly acknowledges and regulates the existence of European venture capital funds and social entrepreneurship funds.

iv Insurance companies

The management of insurance companies' assets and their rules are contemplated in the recently enacted Law 20/2015, of 14 July, on Regulation, Supervision and Solvency of Insurance and Reinsurance Entities (Law 20/2015) and Royal Decree 1060/2015, of 20 November, on the Regulation, Supervision and Solvency of Insurance and Reinsurance Entities (jointly, the Private Insurance Regulations).

The Private Insurance Regulations transpose into Spanish law the Solvency II Directive¹⁰ aiming to improve the corporate governance of insurance entities. Among other matters, it strengthens the requisites of honourableness and professional skills to perform the effective management of insurance and reinsurance companies; develops the legal framework on risk management and compliance; and strengthens the requirements of solvency and financial transparency.

Insurance and reinsurance entities are supervised by the DGSFP.

v Securitisation funds

Securitisation funds and their management companies are now regulated in recent Law 5/2015 which, among other issues, consolidates into one piece of legislation the (until now) dispersed legal framework on securitisation. The entry into force of Law 5/2015 has brought relevant novelties to the landscape of securitisation in Spain, one of the most relevant being the faculty of management companies that manage securitisation funds to 'actively manage' the securitised portfolio of assets of open-ended securitisation funds. As this ability was not contemplated under Spanish law until now, the role of this type of management company was limited to merely passive actions such as monitoring the credits rights securitised, collecting them or, eventually, enforcing them.

Both securitisation funds and their management companies are supervised by the CNMV.

vi Real estate investment listed companies (SOCIMIs)

SOCIMIs are specifically regulated under Law 11/2009, of 26 October (SOCIMIs Law), a regulation inspired by that regulating US real estate investment trusts.

vii Asset management companies

In order to comply with the undertakings of the Kingdom of Spain under the MoU, Law 9/2012 and Royal Decree 1559/2012 were enacted. The purpose of these regulations was to set up a comprehensive framework for the restructuring and resolution of credit entities by the Spanish authorities. One of the most prominent instruments of such a framework is the use of asset management companies (AMCs), which are entities intended to manage the 'toxic' assets from credit entities in financial trouble. Law 9/2012 and Royal Decree 1559/2012 also contemplated a single AMC – the Company for the Management of Assets

10 2009/138/EC Directive of the European Parliament and of the Council, of 25 November 2009, on the Taking-up and Pursuit of the Business of Insurance and Reinsurance.

proceeding from Restructuring of the Banking System (SAREB)– incorporated to manage the toxic assets from the banks undergoing restructuring or resolution processes since 2012, as well as certain separate pools of assets defined as banking assets funds (BAFs).

Law 9/2012 has recently been partially superseded by Law 11/2015 and only some of its provisions amending other regulations and certain additional provisions remain in force. Law 11/2015 constitutes a continuation of the regime set forth in Law 9/2012 and shares the same principles as it, replicating, to a great extent, its structure and sections, however, Law 11/2015 is applied not only to credit institutions but also to investment firms (hereinafter, Law 9/2012, Royal Decree 1559/2012 and Law 11/2015, jointly and as in force in each case, Credit Entities Resolution Regulations). Among other amendments introduced by Law 11/2015, there is the reform on securities clearing, settlement and registration and the creation of the National Resolution Fund, which received contributions from credit institutions and investment funds and will be replaced by the EU Single Resolution Fund. Credit institutions will need to contribute to the EU Single Resolution Fund in the coming years (investment firms will continue to contribute to the National Resolution Fund).

III COMMON ASSET MANAGEMENT STRUCTURES

There is a panoply of structures under which assets can be managed in Spain. Each structure poses certain specific features that indicate the sector within which its business takes place or the nature of the assets under management.

i Investment firms

Investment firms are those whose main activity is rendering investment services over financial instruments to third parties on a professional basis, those services being listed and described in the Securities Market Law.

Investment firms can be categorised as follows (from the broadest to the narrowest scope):

- a* broker-dealers;
- b* brokers;
- c* portfolio management companies; or
- d* financial advisory firms.

This category depends, broadly speaking, on whether they operate in their own interests or solely in the interests of third parties, and on the variety of services that they are entitled to render.

Typically, asset management business is carried out by portfolio management companies, which are entities that can only render the following investment services: discretionary portfolio management activities on an individual basis and in accordance with a mandate received from a client, and investment advice (i.e., the provision of personal recommendations to a client, either upon the latter's request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments). They may also provide those ancillary services specifically foreseen in the Securities Market Law.

It is worth noting, however, that both broker-dealers and brokers are also legally entitled to render those services (albeit brokers can only do so in third parties' interests), as well as credit entities (to the extent that their legal regime, articles of association and administrative authorisation allows them to do so).

Portfolio management companies, which take the form of Spanish open limited liability companies, need, for the purposes of carrying out investment services activities (as well as brokers-dealers and brokers), to be authorised by the Minister of Economy and Competitiveness and registered in the relevant registries held by the CNMV.

ii Collective investment schemes

Open-ended collective investment schemes (IICs)

IICs can be described as schemes whose purpose is to collectively invest funds attracted from the public, whose functioning is subject to the principle of risk-allotment and whose units are repurchased with a charge to the assets of the institution upon request of the investor. IICs can be categorised in various manners.

Based on their legal form, IICs can be categorised as investment funds or investment companies. Investment funds are IICs that are structured as a separate pool of assets without legal personality that belong to a number of investors (including other IICs), and whose management and representation is performed by a SGIIC with the assistance of a depositary entity.

Investment funds can be divided into different divisions, each being given a different name, but under the general denomination of the fund. Each division issues its own units, which represents the part of the net worth of the fund that is attributed to that division. The subscribers to the relevant units of the investment fund will be considered unitholders. Each fund must have at least 100 unitholders, who will not be responsible for the liabilities of the relevant fund except up to the amount of their investment.

Investment companies are IICs that are structured as Spanish open limited liability companies. The share capital of investment companies needs to be fully subscribed and paid-up from their incorporation date and be represented by shares. As with investment funds, it is possible to create investment companies with different divisions. Again, the number of shareholders cannot be fewer than 100, and in certain cases, it is necessary for these companies to appoint an SGIIC. Besides, since Law 22/2014 came into force, the general rule is that investment companies also need to appoint a depositary entity.

Based on the type of assets in which they invest, IICs can also be categorised as financial IICs or non-financial IICs. Financial IICs – which, when incorporated as investment companies, are also known as SICAVs – are IICs whose purpose involves investing in financial assets and instruments. The investment strategy of financial IICs must be undertaken within certain boundaries, *inter alia*:

- a* only assets that are listed and described in the CIS Law are available for investment;¹¹
- b* liquidity ratios must be complied with to guarantee investors' refunds; and

11 *Inter alia*, securities and financial instruments admitted to trading in certain stock exchanges and other markets or organised trading systems; shares or units in certain UCITS not allowed to invest more than 10 per cent of their assets in shares or units of other IICs; or shares or units in certain open-ended alternative investment funds (Spanish open-ended AIFs) not allowed to invest in other IICs.

- c the risk profile of the total investments must be adequately diversified (in general, assets issued by a specific issuer cannot exceed 5 per cent (which figure, under certain circumstances, may be increased to 10 per cent) of the IICs' assets or 15 per cent in relation to that issuer's group).

A particularly relevant subcategory of financial IICs is made up of free IICs (or hedge funds) and IICs of free IICs (or funds of hedge funds). These are, basically, IICs (not qualifying as UCITS) that are subject to requirements similar to those of conventional IICs, but with certain features that, in general, allow for more flexible management and investment strategies.

For instance, investment in these free IICs requires a minimum disbursement of €100,000, except for those qualifying as professional investors; and potential non-professional investors are required, before acquiring shares or units of these IICs, to sign a document declaring themselves aware of the risks arising from the investment, except in those cases in which the client has a portfolio management agreement authorising the investment in these IICs, and such agreement contemplates similar warnings to those in the aforementioned document.

The CIS Law only appears to expressly contemplate as non-financial IICs the real estate IICs, whose principal activity involves investing in urban real estate property for letting. Additionally, real estate IICs are allowed to invest in securities admitted to trading in secondary markets. The investments made by this type of IICs must comply with certain liquidity and diversification ratios. These IICs can be incorporated as companies or as funds.

Based on whether they are authorised under the UCITS Directive, IICs can be categorised as UCITS, otherwise as Spanish open-ended AIFs. If open-ended AIFs are managed by SGIICs or managers authorised in another EU member, they may be freely marketed throughout the EU using a straightforward passporting procedure.

SGIICs

SGIICs are Spanish open limited liability companies incorporated for an indefinite time, whose corporate purpose involves managing the investments, controlling and managing the risks, the administration and the management of the subscriptions and reimbursements of IICs. In doing so, SGIICs exercise powers corresponding to those of the owner of the funds without being their owners, and act jointly with depositaries. SGIICs' share capital (which needs to be represented by registered shares) must comply with a minimum required amount and be fully paid up.

After the entry into force of Law 22/2014, SGIICs are also allowed to manage, represent and commercialise VCEs, closed-ended schemes, European venture capital funds and social entrepreneurship funds. SGIICs must specify the criteria used to assess the adequacy and proportionality of their risk management policies as to the nature, scale and complexity of the activities of the management companies and the IICs managed by them. Additionally, SGIICs are now required to apply specific rules to control and manage potential conflicts of interest.

To incorporate an SGIIC, it is necessary to obtain authorisation from the CNMV. Such authorisation is conditional upon meeting a number of requirements, some of which may involve having a good administrative and accounting organisation, and adequate technical and human resources.

SGIICs are accountable with regard to the unitholders or shareholders of the IICs they manage for any damages arising from infringement of their obligations.

Closed-ended schemes

Law 22/2014 brought closed-ended investment structures into Spanish law. These closed-ended schemes consist of collective investment mechanisms that raise capital from a number of investors by means of marketing activities to invest the funds in any type of assets (financial or non-financial) according to a defined investment policy and that have no commercial or industrial target.

Law 22/2014 also regulates VCEs, categorising them as a type of closed-ended investment scheme that raise capital from investors by means of marketing activities, the commercial aim of which is to generate gains or returns for its investors, and the basic corporate purpose of which involves acquiring temporary interests in the share capital of non-financial or non-real estate companies (or both) that, as of the moment when the interest is acquired, are not listed companies. Additionally, these entities can invest in securities issued by companies in which real estate properties represent more than 50 per cent of their aggregate assets to the extent that at least 85 per cent of such real estate assets are devoted, on a continuing basis during the entire time when the shares are held by the VCE, to the development of an economic activity.

Closed-ended collective investment schemes are managed by specific management entities (SGEICs) or by SGIICs that in both cases need to be authorised for such purposes. Besides, management entities have to appoint a depositary entity for every fund or company they manage whose assets under management are above certain thresholds. Additionally, closed-ended collective investment schemes may take the legal form of a fund or a company.

Both closed-ended collective investment schemes and their managers are regulated entities in Spain, and subject to the supervision of the CNMV. Their incorporation is subject to the authorisation of the CNMV, and their operations are subject to information, audit and investment policy requirements.

Closed-ended collective investment schemes shall only be marketed to professional investors save when the same requirements as those in respect of hedge funds or funds of hedge funds are met.¹²As mentioned above, AIFs may take the form of closed-ended schemes. The regime on cross-border marketing of closed-ended AIFs according to Spanish law may be summarised as follows:

- a* Marketing of Spanish AIFs in the EU and EU AIFs in Spain is possible through the passporting process.
- b* Marketing of non-EU AIFs by EU alternative investment funds managers (AIFMs) and by non-EU AIFMs is possible by prior verification of the relevant conditions and submission for filing all the requested information in order to apply for the authorisation and registration of the non-EU AIFs. EU AIFMs and non-EU AIFMs both need to be registered with the CNMV.

iii Pension funds

Pension funds

Spanish pension funds are pools of assets without legal personality that are set up as instruments to implement pension schemes.

Each Spanish pension scheme must be related to a pension fund in a manner such that the contributions to the pension scheme made by its constituents and unitholders are

12 See Section II.ii, *supra*.

deposited in a certain account held within the fund. The obligations with regard to the unitholders in the scheme are satisfied with monies withdrawn from such an account, which will also receive returns from investments made by the fund and attributable to that scheme.

As described below, Spanish legislation contemplates three different types of pension schemes depending on their constituents: an employment system's pension scheme, an associate system's pension scheme and an individual system's pension scheme. Pension funds can either operate for pension schemes within the first category, in which case they would be classified as employment pension funds, or within the second and third categories, in which case they are labelled personal pension funds. Additionally, pension funds can be either open-ended or closed-ended depending on whether they are limited to only channel investments from related pension schemes (i.e., with an account held in the fund). The Private Insurance Regulations have further developed the rules on open-ended pension funds, widening and making their scope of operation more flexible and allowing for more diversified investment policies and management. The incorporation of pension funds is subject to prior approval by the Ministry of Economy and Competitiveness and the General Directorate of Insurance and Pension Funds, which holds a registry of pension funds and pension fund management companies.

Pension fund managers

Spanish pension funds are managed by pension fund management companies with the assistance of depositary entities and under the supervision of a control committee.

Pension fund management companies, which take the form of Spanish open limited liability companies, need to obtain suitable administrative authorisations and are subject to the supervision of DGSFP. Such companies also need to meet a number of requirements, including certain paid-up capital and net-worth minimum requirements, and limiting their corporate purpose to managing pension funds. In addition, pension funds may also be managed by insurance companies authorised to operate in the life insurance area in Spain provided that they meet certain prerequisites, including the minimum requirements as to paid-up capital and net worth previously mentioned.

Pension fund investments

The investment activity of pension fund assets is subject to certain restrictions as set out in the Pension Funds Law and the Pension Fund Regulations. First, investments must be carried out according to certain criteria including security, profitability, diversification, liquidity, monetary consistency and suitable terms. Additionally, pension funds must invest at least 70 per cent of their assets in financial securities traded on regulated markets, derivatives traded in organised markets, banking deposits, mortgage-backed credits, properties or real estate IICs.¹³ Further limitations to Spanish pension schemes or funds business apply.¹⁴

13 Spanish pension funds may also invest in securities admitted to trading on the Alternative Stock Market, the Alternative Fixed Income Market and in venture capital funds (up to 3 per cent of the fund's assets).

14 For instance, pension funds are subject to maximum investment limits and some establish maximum percentages that certain assets may represent in relation to their total assets;

iv Insurance companies

There are several types of insurance companies under Spanish law, including insurance companies with a fixed prime, insurance companies with a variable prime and insurance cooperatives. Each type of entity needs to comply with a number of requirements to render insurance services in Spain. One such requirement is the setting-up of adequate technical provisions, which must be established and maintained in such an amount that they are able to cover all the risks arising from underwritten insurance and reinsurance policies, as well as to support the company's stability against random or cyclical shifts in claims or special risks.

Those technical provisions may be invested in certain acceptable assets¹⁵ according to the principles of consistency, profitability, security, liquidity, dispersion and diversification; all of the foregoing refer to the type of operations carried out by the insurance company and its commitments.

v Securitisation funds

Securitisation funds are separate pools of assets and liabilities, without legal personality and with a zero capital net worth whose patrimony will consist of, on the assets side, credit rights (present or future) that meet the criteria set forth in Law 5/2015; and on the liabilities side, fixed interest rate issuances carried out by them as well as the loans they have been granted.¹⁶

Securitisation funds can be either open or closed-ended depending on whether new assets and liabilities can be added to their patrimonies once they have been incorporated.

As regards open-ended funds, Law 5/2015 allows their management companies to actively manage their securitised portfolio of assets. Such faculty shall have to be contemplated in the fund's incorporation deed, which shall describe its management policies. In addition, if applicable, the prospectus in relation to the fund shall also contain a description of such policies.

It is worth noting that since the entry into force of Law 5/2015, the assignment in favour of a securitisation fund of credit rights recorded as assets of the originator no longer has to be in full, unconditional and for the entire remaining term until maturity, which gives much more flexibility to this type of structure.

Securitisation fund managers

Securitisation fund managers are Spanish open limited liability companies, incorporated for an indefinite time, whose corporate purpose comprises the incorporation, management and legal representation of securitisation funds as well as BAFs. In addition, their minimum share capital amounts to €1 million and needs to be fully subscribed and paid-up as well as represented by nominative shares.

pension funds may not generally borrow funds, with certain exceptions; and the financial and actuarial system of the schemes have to be revised by an actuary, such revision needing to be carried out, in general, at least every three years.

15 The acceptable assets are listed and described in the Private Insurance Regulations as well as in EU Regulations directly applicable to insurance companies.

16 It is worth noting that, under certain circumstances, management companies of securitisation funds are allowed to enter into swaps or other types of derivative contracts on behalf of the funds under their management.

These entities are subject to a wide range of organisational and transparency requirements that are more stringent in respect of securitisation fund managers that choose to actively manage the securitisation funds they manage (mainly as regards management's and employees' remuneration rules).

The incorporation of securitisation funds managers is subject to the prior authorisation of the CNMV. In addition, once authorised and prior to the commencement of their activities, they need to be registered with the CNMV.

vi SOCIMIs

There are two main types of entities under Spanish law the purpose of which is to invest in real estate assets: real estate IICs¹⁷ and SOCIMIs.

SOCIMIs are Spanish-listed open limited liability companies, which may opt for a special tax regime provided that they comply with certain requirements, one of which is that their main purpose be direct or indirect investment in urban real estate assets for rental, including both housing and business premises, residences, hotels, garages and offices. Indirect investment may be conducted by means of the acquisition of interests in other SOCIMIs, in other entities that are subject to similar profit distribution requirements or in real estate IICs.

Investment activity by SOCIMIs must be carried out within certain boundaries. In particular, it can only be made in respect of those assets listed and described in the SOCIMIs Law. Additionally, at least 80 per cent of their assets must be invested in those assets referred to in the previous paragraph. Finally, SOCIMIs are required to distribute the following as dividends:

- a* 100 per cent of any dividends and profit participations received as a consequence of their stake in other entities;
- b* at least 50 per cent of any profits deriving from divestment of real estate property and share capital interests; and
- c* at least 80 per cent of any remaining profits.

Given their nature, SOCIMIs are subject to double supervision: the Spanish tax authorities supervise compliance with the necessary requirements for special tax treatment and the CNMV supervises the operation of SOCIMIs in the securities market.

vii AMCs, SAREB and BAFs

The bursting of the housing bubble (the effects of which are still noticeable in Spain almost nine years later), together with the collapse of the real economy, has left most Spanish credit entities with enormous portfolios of real estate assets, often as a consequence of mortgage foreclosure proceedings or property-backed non-performing loans. The maintenance of these assets in their balance sheets jeopardises both their solvency and their chances of survival.

In view of the foregoing, the EU resolved in 2012 to put in place a Financial Assistance Programme for the Spanish banking sector by means of the MoU. One of the main objectives of the MoU was the establishment of a well-defined and effective framework for the management of the banking crisis. AMCs are one of the most relevant instruments within such framework (the landscape is completed by SAREB and BAFs).

17 See Section II.v, *supra*.

AMCs

AMCs are Spanish open limited liability companies that are incorporated in the context of the restructuring and resolution process of a credit entity to isolate toxic assets within such entity's balance sheet, and are currently regulated by Law 11/2015. The Fund for the Orderly Restructuring of the Banking Sector (FROB) can oblige a credit entity to transfer certain categories of assets in its balance sheet (or to direct an entity under its control to effect such a transfer) to an AMC when those assets are particularly damaged or their maintenance on the balance sheet is deemed detrimental to the entity's viability.

The purpose of these transfers (and the very existence of AMCs) is to ease the transmission of risks to entities as remote from the depositors as possible, to minimise the need for public funding and the occurrence of market distortion and, ultimately, to facilitate the disposal of dangerous assets in an isolated fashion.

The FROB lists in each case those categories of transferable assets. The Credit Entities Resolutions Regulations set out a number of rules the aim of which is to facilitate the effectiveness of those transfers¹⁸ as well as the obligation to conduct value adjustments on a pre-transfer basis.

Finally, it is worth noting that AMCs are entitled to raise debt by issuing bonds.

SAREB and BAFs

While AMCs are meant to apply to all the processes that may need to be undergone in the future, the Credit Entities Resolutions Regulations also set out the rules for the incorporation of SAREB, whose purpose was to acquire the toxic assets from those credit entities that were nationalised in 2012.¹⁹

SAREB is a Spanish open limited liability company incorporated by the FROB. It was created with the exclusive purpose of managing and disposing of certain assets received from the nationalised credit entities.²⁰ Each such transfer has been subject to pre-transfer value adjustments.

The FROB holds a 45 per cent minority interest in the share capital of SAREB, while private investors (mostly, Spanish credit entities) hold the remaining 55 per cent. In terms of corporate governance, SAREB is subject to the Spanish Companies Law. Its management is entrusted to a board of directors within which an auditing committee and a remunerations and appointments committee are set up. SAREB is also subject to the supervision of a monitoring committee.

18 For example, no third-party consent may be needed, no restrictions to the transferability of assets on articles of association or contracts will apply, and these transfers are not subject to clawback or mandatory takeover bid rules.

19 Pursuant to Royal Decree-Law 24/2012, these entities were BFA-Bankia, Catalunya Banc, NCG Banco-Banco Gallego, Banco de Valencia, BMN, Liberbank, Caja3 and Ceiss.

20 The assets that SAREB has received are within one of the following categories: foreclosed real estate assets with a net book value above €100,000; loans financing real estate with a net book value above €250,000 (not limited to non-performing loans); or equity in real estate companies controlled by banks.

SAREB's mandate is to complete the disposal of its full portfolio²¹ within 15 years of its incorporation (albeit no minimum annual divestment thresholds apply). In order to do so, it has a particularly relevant instrument at its disposal: the BAF.

BAFs are insolvency-remote pools of assets and liabilities without legal personality incorporated by SAREB; any portion of their portfolio can be allocated and must be filed with a certain registry held by the CNMV. These funds (which can be open-ended or closed-ended) are governed by the Credit Entities Resolutions Regulations, as well as by the regulations applicable to asset securitisation funds, mortgage securitisation funds and collective investment schemes, as applicable. BAFs are managed by asset securitisation fund management entities that comply with the requirements set out under the aforementioned Regulations.

BAFs can be divided into different divisions, each of which may issue securities or undertake obligations on a separate basis. The transfer of assets and liabilities from SAREB to each BAF benefits from the same rules that are applicable to the transfer of assets to AMCs. Finally, one of the most notable features of the BAF is its privileged tax regime.

When using this instrument, the disposal by SAREB – and hence, the investment by potential acquirers – will take place through the purchase of units of the BAF.

IV MAIN SOURCES OF INVESTMENT

i Size of the industry and recent trends

According to the latest report issued by the CNMV²², after approximately three years of growth of the mutual funds industry, in the first quarter of 2016, the assets under management decreased by 1.7 per cent to €218 billion in respect of the last quarter of 2015. This fall is mainly driven by the devaluation of the funds portfolio value, except for the fixed income and the guaranteed fixed income funds.

The number of funds has declined slightly since the second quarter of 2015, closing with 1,799 registered funds. The number of unit-holders has remained stable since the third quarter of 2015, the guaranteed fixed income funds being those that registered the largest losses of investors.

Regarding the real estate schemes, the main figures have remained constant, including the number of real estate funds and investment companies as well as the value of assets under management. The return of these schemes has significantly improved, although not enough to start recording profits.

The total volume of investments by foreign UCITS marketed in Spain has been expanding since 2012 and seems to start its stabilisation since, after years of increases, there has been a reduction in the value of their assets by 0.7 per cent. Additionally, the number of foreign UCITS registered with the CNMV rose from 805 at the end of 2014 to 904 at the end of March 2016. As in previous years, the majority of such new registrations are related to vehicles from Luxembourg and Ireland.

21 SAREB received a portfolio of 197,474 assets valued at €50.781 million (80 per cent are financial assets and 20 per cent are real estate assets).

22 This information is taken, except unless otherwise stated, from the CNMV's Quarters I and II 2016 Bulletins, the closing date of which is 15 June 2016.

The amounts under management of pension funds at the end of 2015 increased to €104,518 million.²³ This represents an increase of 4 per cent in respect of the 2014 figure, which is substantially lower than the increase registered from 2013 to 2014, which was 11.5 per cent.

Contributions to pension schemes went down by nearly 10 per cent compared with 2014, and the number of schemes was 2,744 (a fall of 84 since the end of 2014).

From 2014 to 2015, the number of SICAVs rose to a total of 3,372 and their aggregated assets increased by 5.4 per cent compared with the 2014 figure.

ii Type of investors

According to the Spanish Association of Collective Investment Schemes and Pension Funds, one of the most characteristic features of the Spanish collective investment outlook is that Spanish investment funds are mainly participated by Spanish families (only 30 per cent is held by institutional investors) whereas 71.9 per cent of the European investment funds are held by institutional investors.

In 2015, Spanish households invested 38.7 per cent of their financial assets in bank deposits, while products without bank intermediation, such as investment funds and companies, pension funds, life insurances and direct investment in variable equity, represented around 55.7 per cent of the total household portfolio.

In comparison to the European average, the investment of Spanish households is lower in pension funds and insurances and higher in relation to bank deposits and cash equivalents.

iii Portfolio structure

As of 31 December 2015, the breakdown of aggregated investment funds' portfolios stood at 58.1 per cent fixed income (mainly Spanish fixed income), 11.7 per cent variable income, 21.5 per cent investments in other investment funds and the remaining percentage, other assets (including cash and cash equivalents).

V KEY TRENDS

In 2015, with a 3.2 per cent increase in its GDP, the Spanish economy outperformed the majority of European countries, which on average registered a GDP growth of 2 per cent. This growth rate is the highest since 2007, when GDP reached 3.2 per cent growth, before the recession started. Households and companies are increasing their wealth and diversifying their investment portfolios (mostly to seek higher returns in a context of historically low interest rates); and the level of foreign direct investment shows that the trust of international investors is returning. Nevertheless, recovery will not be complete until the still unacceptable (though diminishing) unemployment rate decreases to an acceptable level.

23 All the information in this section related to pension funds, except unless otherwise stated, is taken from the information made available to the public by the Spanish Association of Collective Investment Schemes and Pension Funds (INVERCO): www.inverco.es/archivosdb/c89-ahorro-financiero-de-las-familias-iics-y-fp-2015.pdf.

However, data from the first quarter of 2016 indicate that, after nearly three years of increases, the asset management market growth in Spain has started to slow down. In line with this, and although the 3.2 growth rate in GDP registered in 2015, the estimates from the European Commission forecast a GDP growth of 2.6 per cent in 2016. Therefore, the key metrics seem to indicate that the economy will continue to grow at a steady pace but without expecting the strong growth rate registered in 2015.

The political uncertainty resulting from the Brexit win in the United Kingdom's referendum (which will take at least two years), the increase in interest rates in the United States, low oil prices and the growth slowdown of some emerging economies may lead to a slight decrease of economic growth in 2016.

The results of the general elections in December 2015 failed to produce a government and forced the country to hold repeat elections in June 2016, paralysing the parliament for more than six months. The results of the second general elections in June 2016 have not been decisive, although recent events seem to indicate that the political parties could reach a deal to create a government. As a consequence of this legislative paralysis, less new legislation has been enacted, including Law 11/2015, of 18 June, on the recovery and resolution of credit institutions and investment firms and Law 20/2015, of 14 July, on organisation, supervision and solvency of insurance and reinsurance companies.

According to the CNMV Plan of Activities 2016, among the objectives at a regulatory level for 2016, there is the proposal for a new penalty system regulated in the revised Securities Market Law and the promotion of new regulatory changes for the submission of notification of significant holdings by electronic means.

VI SECTORAL REGULATION

i Insurance

Asset management by insurance companies is governed by the Private Insurance Regulations. The purpose of such regulations is quite broad, setting up the regime and supervision of private insurance activity in Spain with a view to protecting policyholders, enhancing transparency within the insurance industry and promoting private insurance business in Spain.

In doing so, the Private Insurance Regulations set out, *inter alia*:

- a* the conditions and requirements that must be met by an entity to undertake insurance business;
- b* the types of legal entity that may engage in such activity;
- c* the supervision of insurance companies;
- d* the rendering of insurance services on a cross-border basis;
- e* reinsurance activity;
- f* policyholder protection; and
- g* the regime applicable to pension mutual funds.

ii Pensions

Asset management of pension funds is regulated by the Pension Funds Law and the Pension Funds Regulations, the purpose of which is to establish the framework for Spanish pension schemes, including pension funds.

Pension schemes may be classified in various ways according to the Pension Funds Law depending on their constitution and the nature of their commitments.

iii Real property

As previously noted, investments in real estate assets are typically conducted in Spain in the form of two types of entity: real estate IICs and SOCIMIs. Real estate IICs are regulated by the CIS Law.

As so few SOCIMIs had been incorporated since 2009, the regime was relaxed in December 2012.²⁴ The general purpose of the reform was to facilitate the application of the tax regime by reducing the applicable requirements. A number of changes were introduced to that effect, one of the most relevant being that the shares of these listed entities can be traded not only in regulated markets, but also, for instance, in the Alternative Stock Market, whose admission requirements are less stringent. Additionally, the minimum share capital requirement has been reduced from €15 million to €5 million.

These changes have proven effective; for instance, at the time of writing, there are 21 SOCIMIs listed, either on the Continuous or the Alternative Stock Market, compared to three SOCIMIs in 2014.

Halfway between the real estate market and the regulatory environment for credit entities are AMCs, SAREB and BAFs. Even though their purpose is to serve as instruments for the restructuring or resolution of banks, the nature of the assets currently under SAREB's management (real properties or real estate-related credits) makes them noteworthy.

iv Hedge funds

Spanish hedge funds are regulated under the CIS Law within a specific section relating to financial IICs that do not qualify as UCITS and Regulation 1082/2012 (which, *inter alia*, foresees the acceptable assets for investment as well as their obligations with regard to third parties).

v Private equity

The private equity industry in Spain has traditionally used the legal form of VCEs, which is now regulated by Law 22/2014. The sector is adapting itself to the new regime and regulations.

VCEs need to have a defined investment policy, which covers, *inter alia*:

- a* the sectors and geographical areas where the investments will be focused;
- b* the minimum and maximum stake that the VCE will hold in the relevant companies; and
- c* the type of financing that will be granted to the companies they hold an interest in.

At least 60 per cent of the calculable assets of a VCE needs to be invested in:

- a* shares or other securities or financial instruments that confer the right to acquire such securities in the capital of companies that comply with the requirements set out by Law 22/2014;
- b* participative loans in such type of entity, the interest of such loans being fully correlated to the results of the borrower in a manner that, if the borrower's results are negative, no interest will be paid on the loan;

²⁴ Law 16/2012, by means of which certain measures of a tax nature are adopted for the consolidation of public financials and the promotion of economic activity.

- c* other participative loans to companies within its corporate purpose with a limit of 30 per cent of its aggregate computable assets; and
- d* shares or interests in other VCEs.

Management entities are subject to transparency obligations in respect of the venture capital entities they manage (e.g., to make available to the public an informative prospectus and an annual report).

VII TAX LAW

Within the framework of a comprehensive reform carried out in November 2014 by the government in order to comply with the MoU conditions and to boost Spanish competitiveness, the government has approved a new Corporate Income Tax (CIT) Law²⁵ by which there have been, *inter alia*, significant amendments to CIT and non-resident income tax (NRIT).²⁶ However, such reforms will not have a significant impact on the taxation of collective investment schemes, although investors will benefit from the reduced tax rates.

Regarding Spanish resident collective investment schemes, open-ended IICs are non-transparent entities subject to Spanish CIT, albeit at a rate of 1 per cent. As for closed-ended IICs (including VCEs), these are subject to the general Spanish CIT rate, which has recently been reduced from 28 per cent to 25 per cent for tax periods starting as from 1 January 2016. Spanish resident pension funds remain taxed under the CIT, but at a rate of zero per cent.

Income deemed to be obtained in Spain by a non-resident is subject to NRIT, generally at a rate of 24 per cent; however, income obtained by residents in an EU Member State²⁷ is subject to a rate of 19 per cent for tax periods starting as from 1 January 2016. Additionally, a reduced rate of 19 per cent is applied to dividends, interest and capital gains for tax periods starting from 1 January 2016, regardless of the residence of the non-resident taxpayer. Each income stream is subject to taxation separately on a gross basis (no expenses are deductible, with certain exceptions). Normally, a withholding tax equal to the non-resident's final tax liability is levied on interest, dividends and capital gains on IICs.

As regards non-Spanish resident managers of collective investment schemes, any Spanish-sourced income earned when carrying out their management activity (fees, commissions or any other returns) will be subject to Spanish NRIT at the general 24 per cent rate (or 19 per cent when earned by residents in an EU Member State, Norway or Iceland), but most conventions for the avoidance of double taxation (CDTs) entered into by Spain

25 Law 27/2014, of 27 November, on Corporate Income Tax.

26 Two major developments introduced by this new Law are, *inter alia*, the possibility to indefinitely apply loss carry forwards generated during tax periods starting as from 1 January 2015; and the introduction of new limitations on the tax deductibility of interest paid in consideration for debt incurred to acquire shares in another company in the context of a leveraged buyout (30 per cent of the EBITDA – as defined in the CIT Law – of the acquiring company or existing tax group).

27 Or by residents in a Member State of the European Economic Area with which Spain has an effective exchange of tax information as defined in Law 36/2006, of 29 November, on Measures to Prevent Tax Fraud.

provide for an exemption from tax on business profits obtained in Spain (unless those profits are earned through a Spanish permanent establishment). Spanish-sourced income includes interest paid by a Spanish-resident taxpayer or with respect to financing used in Spain, gains on the disposition of bonds issued by Spanish-resident persons, dividends distributed by Spanish-resident entities, including collective investment schemes, and capital gains on the disposition of shares and units issued by Spanish-resident entities, including IICs.

Generally, non-resident taxpayers are subject to NRIT on Spanish-sourced income, and must declare and pay NRIT during the first 20 days of April, July, October and January: NRIT is paid on income obtained during the immediately preceding calendar quarter.

Below is a brief description of taxation applicable to non-resident investors; the sections below refer to individuals or entities not resident in Spain for tax purposes and not acting through a permanent establishment located in Spain.

i Capital gains

In general, capital gains obtained in Spain by a non-resident taxpayer will be taxed under the NRIT at a 19 per cent rate for tax periods starting from 1 January 2016. No withholding tax is levied on capital gains, except on those related to an investment in a Spanish open-ended IIC (with the exception of qualified exchange-traded mutual funds).

Domestic legislation provides for an exemption from taxation for residents of countries having concluded a CDT with Spain, which usually includes an exchange of information clause, in the case of transfers of shares or reimbursements of units in an IIC in an official Spanish secondary securities market.

In addition, legal persons resident in an EU Member State are entitled to an exemption on capital gains obtained upon a disposal of Spanish shares, provided that the non-resident taxpayer has recently owned, for an uninterrupted period of one year, a minimum 5 per cent participation or a participation with an acquisition cost of at least €20 million,²⁸ and to the extent the assets of the company to which the shares belong do not consist mainly, directly or indirectly, of real estate located in Spain.

In addition, natural persons resident in a EU Member State are entitled to an exemption on capital gains obtained upon the disposal of Spanish shares, unless the non-resident taxpayer has owned, at any time during the one year prior to the transfer, shares representing 25 per cent or more of the transferred entity, or if the assets of the company to which the shares belong consist mainly, directly or indirectly, of real estate located in Spain.

The exemption will not apply if the said gains are obtained through tax haven jurisdictions.

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. In some cases, when the assets consist of shares in a Spanish-resident entity, the exemption is subject to the holding being below significant participation thresholds (generally, 15 or 25 per cent).

28 Non-resident natural persons are not subject to this requisite; however, they will only be entitled to the referred exemption on capital gains to the extent that they did not hold a participation of 25 per cent or more in the share capital of the Spanish company in the 12 months prior to the transfer of shares.

ii Interest and dividends

In general, interest and dividends obtained in Spain by a non-resident taxpayer will be subject to NRIT at a rate of 19 per cent for tax periods starting from 1 January 2016 and will be subject to withholding tax.

Domestic rules provide certain tax exemptions on income obtained by non-residents. In addition, EU residents are entitled to an exemption on interest obtained in Spain, provided that the interest is not obtained through a tax haven jurisdiction.

Regarding dividends, no Spanish withholding taxes are levied on the dividends distributed by a Spanish subsidiary to its parent company resident in a EU Member State, Norway or Iceland to the extent that:

- a* either the parent company maintained an uninterrupted direct holding in the capital of the Spanish subsidiary of at least 5 per cent for the whole year prior to the date on which the distributed profit is due, or the acquisition value of such holding exceeded €20 million;
- b* the parent company is incorporated under the laws of an EU Member State, Norway or Iceland, and is subject to CIT in a Member State, without the possibility of an exemption; 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 dividend withholding tax exemption will not be applicable in the event that the majority of the voting rights of the parent company is held directly or indirectly by individuals or entities not resident in an EU Member State, Norway or Iceland, except if the incorporation of the parent company took place, and its operations are conducted, on the basis of valid economic reasons and substantial business motives.

Finally, non-residents that are residents in a country that has entered into a CDT with Spain will be entitled to apply the reduced tax rates provided in the relevant CDT (e.g., CDTs usually establish rates ranging from 0 to 15 per cent on interest and dividends).

iii Royalties

Since July 2011, and subject to certain requirements, royalties paid to associated EU-resident companies are exempt from NRIT provided that certain requirements are met. Otherwise, a 24 per cent tax would apply, (19 per cent when earned by residents in an EU Member State, Norway or Iceland), which may be reduced by applicable CDTs.

iv Spanish holding companies

Spanish holding companies (ETVEs) are defined as companies the corporate purpose of which includes the management of stakes that correspond to active non-resident entities and comply with certain formal requirements. ETVEs may also carry out other non-exempt activities.

One of the main advantages of ETVEs is that dividends and capital gains obtained by non-residents from their participation in an ETVE are not subject to taxation in Spain if they indirectly derive from dividends and capital gains obtained by the ETVE from its participations in non-resident companies or permanent establishments located outside Spain.

v Spanish real estate investment companies

SOCIMIS are, subject to the fulfilment of certain criteria, subject to a zero-rated CIT on qualified real estate income. They may, however, be subject to a 19 per cent tax on the dividends and profit participations paid out to their shareholders provided that the following requirements are met:

- a* the shareholder holds at least a 5 per cent interest in the SOCIMI's share capital;
- b* dividends received by the shareholder in its jurisdiction of residence are exempt or taxed at a tax rate lower than 10 per cent; and
- c* the shareholder does not qualify as an entity regulated under the SOCIMIs Law or as a non-resident listed SOCIMI in respect of which its shareholders hold at least a 5 per cent of the SOCIMI's share capital and the dividends received are exempt or taxable at a tax rate lower than 10 per cent in its tax jurisdiction.

Non-Spanish resident shareholders are subject to the general tax regime on dividends and capital gains resulting from their investment in SOCIMIs, as discussed above.

vi Regulated Spanish VCEs

VCEs benefit from a full exemption from tax on qualified dividends. Regarding capital gains, VCEs are entitled to a full exemption on capital gains triggered by the transfer of shares provided that, prior to it, these entities held more than 5 per cent of the shares of the company whose shares are disposed of or a stake in the company whose value is higher than €20 million during the 12-month period prior to the disposal. VCEs not meeting the foregoing requirements are entitled to a 99 per cent exemption on capital gains carried out between the second and the 15th year of holding. In addition, dividends or capital gains triggered by non-resident shareholders of a Spanish VCE are not subject to Spanish taxation (to the extent the shareholder is not resident in a tax haven jurisdiction).

vii Anti-avoidance rules

No specific anti-avoidance measures have been approved by Spain in connection with these types of investments and investors, except the aforementioned rules that limit the application of tax exemptions or other tax benefits to investors acting through a tax haven jurisdiction, as defined under Spanish tax provisions.

VIII OUTLOOK

The implementation of the AIFMD in Spain has been a major event in the Spanish asset management market from a regulatory perspective in 2014 and 2015, and will continue to be so in future years, since various of its provisions are still pending further development by means of regulations and CNMV circulars. In any event, the main consequence to have noticeable effects on the market is the right to freely market open-ended and closed-ended EU collective investment schemes (to the extent that they do not qualify as UCITS, which have their own regulations) throughout the EU, using a simple passporting procedure.

On the market side, as SAREB is a quite significant player, its activity may determine what the Spanish real estate market will look like during coming years. The new accounting

rules applicable to SAREB, which oblige it to value the assets using stricter criteria, will help maximise the long-term operational profits of companies and is expected to improve sales of assets.

In addition, in the past few months we have witnessed a change in the real state asset management landscape that is likely to last in the middle term, as investment in this sector is now mainly conducted through SOCIMIs (which play the role traditionally performed by real state investment funds and companies). Investments by SOCIMIs represented 42 per cent of total real-estate investment in 2015, a figure that is expected to increase in the next few months.

Appendix 1

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