# Initial Public Offerings

*Contributing editors*
**Joshua Ford Bonnie and Kevin P Kennedy**

2019

GETTING THE DEAL THROUGH

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**Simpson Thacher & Bartlett LLP**

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For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

Law Business Research

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87 Lancaster Road
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# Preface

## Initial Public Offerings 2019

Fourth edition

**Getting the Deal Through** is delighted to publish the fourth edition of *Initial Public Offerings*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on South Africa, Spain and Sweden.

**Getting the Deal Through** titles are published annually in print and online. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Joshua Ford Bonnie and Kevin P Kennedy of Simpson Thacher & Bartlett LLP, for their continued assistance with this volume.

GETTING THE DEAL THROUGH

London
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# Spain

**Javier Redonet and Alfonso Bernar**
**Uría Menéndez**

## Market overview

### 1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

Spain has attractive regulations and trading venues for domestic and international companies going public. In May 2018, total equity market capitalisation of the Spanish Stock Exchanges (SSEs), which is the Spanish regulated market for equity securities, along with the two Spanish multilateral trading facilities for equity securities (the Alternative Equity Market (MAB) and the Latin-American blue-chip market (Latibex) was approximately €1,116 billion.

Since the end of the financial crisis, IPOs on the SSEs have experienced ups and downs. Spain enjoyed strong IPO activity during 2014 and 2015 with 15 companies going public raising aggregate proceeds of €16.2 billion. However, this trend slowed down in 2016, with only four IPOs and €1.4 billion raised, mainly because of the uncertain political scenario, with two general elections in Spain and international developments such as the US elections and Brexit. Spanish IPO activity picked up again during 2017, with five IPOs completed and €3.8 billion raised, whereas there has been a single successful IPO in the Spanish market in 2018 (€600 million), with a few other issuers having been forced to postpone their advanced IPO plans. While prospects for the return of IPOs in the short term are, at the moment, gloomy in light of the continuing disruptions in the global markets driven by the still fragile economic recovery and political uncertainty deriving from concerns about independence movements within the European Union (EU) and the lack of ability of some EU parliaments to form stable governments in due time, it remains to be seen whether current macroeconomic growth shifts Spain away from this trend and pushes it towards an increase in IPO transactions.

### 2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Over the last 25 years, the issuers on the SSEs have mostly been domestic companies from all major sectors, ranging from industrial companies to financial institutions and investment companies. Perhaps the most remarkable feature of recent Spanish IPOs has been the type of businesses going public and the profile of selling shareholders seeking to exit through IPOs. Half of the companies debuting on the SSEs during 2017 and 2018 (and a number of companies which are reportedly in the IPO pipeline) are related to the real estate sector. This is a reflection of the positive recovery that this sector has been experiencing in Spain since the height of the real estate crisis. Also, the shareholders selling their interests in these companies comprise founders and entrepreneurs, private equity sponsors which have successfully carried out the strategies and plans identified at the time of investment in the issuer, and more recently banks seeking to reduce their exposure to real estate owned.

Although Spanish companies typically start trading on the SSEs, a number of blue-chip Spanish companies have subsequently also applied to have their shares listed on some of the principal exchange platforms of the world, such as the New York Stock Exchange or the London Stock Exchange.

With regard to foreign issuers listing in Spain, seven non-Spanish companies had their securities listed on the SSEs in May 2018. All these issuers are EU companies benefiting from the cross-border passporting mechanism that validates any prospectus approved in their 'home' member state in any 'host' member state such as Spain. Recent foreign issuers having sought admission to listing on the SSEs since 2015 include Coca-Cola European Partners Plc (UK) and eDreams ODIGEO (Luxembourg). As regards the Latibex, only 20 issuers were traded on the Latibex platform.

### 3 What are the primary exchanges for IPOs? How do they differ?

The primary exchanges for IPOs of equity securities in Spain are the four stock exchanges located in Madrid, Barcelona, Bilbao and Valencia Stock Exchanges. The SSEs are the Spanish regulated markets supervised by the Spanish National Securities Market Commission (CNMV) and intended for relatively large companies with a minimum capitalisation of €6 million and a minimum distribution among the public at the time of admission of 100 investors or 25 per cent of the company's share capital held by shareholders with less than a 3 per cent stake each. In practice, the customary size for an IPO in the SSEs would be of at least €500 million.

Apart from the SSEs, there is also the MAB. This multiateral trading facility launched in 2006 and aimed at providing a less burdensome regulatory framework to small companies in order to ease their access to the equity capital markets. Although it is far away from the scale of the SSEs, the MAB is growing rapidly, having reached an aggregate market capitalisation of €41 billion in May 2018 within the growth and real estate investment trusts segments. Given the MAB's smaller size and tailor-made regulations and Latibex's special purpose, the following focuses on IPOs on the SSEs.

## Regulation

### 4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

Subject to the matters discussed in the following paragraph, the Spanish Government and the Spanish Parliament (*Cortes Generales*) are currently the institutions responsible for making and approving the main legislation governing public offerings and listings in Spain. In addition to the national public policy makers are public institutions such as the Ministry of Economy and Enterprise and the CNMV, which have limited regulatory power to issue orders and circulars for the implementation and enforcement of legal provisions (insofar as these authorities have been enabled to do so by legislation). Other important regulatory bodies are the stock exchanges and the Spanish central securities depository (Iberclear) which produce their own internal rules, consisting of circulars and operating instructions, to govern their functions and internal organisation.

The CNMV is the domestic authority entrusted with the task of enforcing the rules on IPOs in Spain. For these purposes, the CNMV has been attributed with a range of powers which can be classified in three groups:

- supervisory and investigatory powers to control the suitability of the issuer and the fulfilment of the IPO legal requirements (principally, by the review and approval of the prospectus);
- adoption of precautionary and corrective measures (whether or not in the context of sanctioning proceedings); and
- enforcement authority.

On the EU front, the European Parliament and Council have adopted EU Directives relating to IPOs (particularly the Prospectus Directive) which direct member states to pass national legislation to achieve the goals it establishes. In July 2019, the new EU Prospectus Regulation and its delegated regulations, encompassing the EU IPO rulebook, will become directly applicable in Spain. The European Securities and Markets Authority oversees the consistent implementation of EU regulations across member states from time to time.

**5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?**

An issuer seeking to have its shares admitted to trading on the SSEs must submit applications to the CNMV and to the SSEs for listing and admission to trading. From a practical perspective, the request for admission to trading is the last milestone in an IPO, a mere formality completed after its successful closing, at a time when there is certainty that all requirements for the admission have been met. Accordingly, formal listing applications will be filed only when the CNMV has verified all relevant documentation evidencing that both the issuer and its securities satisfy the suitability and information requirements for going public.

Regarding the suitability requirements, the CNMV must be satisfied that the issuer is a public limited company – or an equivalent legal form for foreign issuers – which is validly incorporated and existing in accordance with the laws of the country in which it is domiciled; and that the shares grant the same rights to all shareholders who are in the same position, meet the legal requirements to which they are subject, are represented in book-entry form, are freely transferable and meet a minimum level of distribution among the public at the time of admission.

In terms of information requirements, the CNMV must be satisfied that the prospectus complies with all regulatory requirements. Ahead of the prospectus approval, the CNMV will also examine the audited individual and consolidated financial statements for at least the preceding three fiscal years (except where a waiver is available, eg, in respect of start-up companies), as well as any audited or reviewed interim financial information, all prepared according to the International Financial Reporting Standards, as adopted by the EU. The CNMV may also request the company to prepare and submit special financial information such as pro forma information, financial forecasts, estimates or valuation reports on the assets of the company. The issuer must submit the internal corporate governance regulations and the composition of the board of directors of the issuer so that the CNMV verifies that they take account of the requirements applicable to listed companies as set forth in the Spanish Companies Law and the Spanish Corporate Governance Code. This includes, notably, the appointment of independent directors representing at least one third of all directors. Finally, the CNMV must be satisfied that the issuer's corporate website satisfies the legal requirements for the websites of listed companies and that the issuer has implemented, or will implement, appropriate internal procedures for ensuring the reliability of financial reporting.

**6 What information must be made available to prospective investors and how must it be presented?**

The most important disclosure document is the prospectus, which must present all information necessary to allow investors to make an informed assessment of the assets and liabilities, financial position, profit and losses and prospects of the issuer and the rights attached to the securities underlying the IPO. Since 2014 the trend is to draft prospectuses for IPOs in the English language following an international offering memorandum format with the content required by the Prospectus Regulation. Typically, the following items will be disclosed, preceded by a summary and description of risk factors relating to the issuer and the securities:

- business;
- financial situation;
- alternative performance measures;
- organisational structure;
- board of directors;
- management team;
- principal shareholders;
- pending and threatened litigation;
- material contracts;
- related-party transactions;
- description of the rights attached to the shares;
- placement procedure;
- lock-up agreements;
- dividends policy;
- the reasons for the offering; and
- use of proceeds.

The prospectus will be ready for distribution to the public only once it is approved by the CNMV. Any other type of materials – usually prepared by the underwriters for marketing purposes – made available to potential investors both before and after such approval may be subject to restrictions as outlined in question 7. After the approval, the prospectus, together with the issuer's financial statements and internal regulations, will be made available to investors on the websites of the issuer and the CNMV.

**7 What restrictions on publicity and marketing apply during the IPO process?**

The IPO advertising activities that are admissible in Spain according to applicable law would vary depending on the time when they are carried out. During the pre-marketing phase or investor education (ie, before the prospectus is approved), publicity must not have the nature and intensity so as to be considered to constitute, by itself, a public offering. As a result, reference to the terms of the offer and the offered securities must be avoided during this stage in any publicity campaign. After the registration of the prospectus, the marketing of the offering should be made using the prospectus as the basic document for promotional purposes.

Furthermore, information included in any promotional materials must not be false or misleading and must state that a prospectus has been, or will be, published. It should also be indicated where investors are or will be able to obtain the prospectus. Importantly, and irrespective of when the prospectus has been approved, the issuer must ensure that any information on the transaction that is disclosed in any form for advertising or other purposes must be consistent with the information contained in the prospectus. Any departure from this rule may expose the issuer to undesired delays in the IPO process and potential liabilities.

It is worth highlighting that even in IPOs solely addressed to qualified investors (which would not qualify as public offerings but rather as private placements exempt from publishing an offering prospectus), it is market practice in Spain that prospectuses be registered with the CNMV before the underwriters begin the book-building. As these prospectuses later serve as the required listing particulars, this early registration provides full certainty to the process in terms of the timing and symmetry of information between the marketing materials of the offering and the listing prospectus.

Attention should be given to other publicity restrictions outside Spain (especially in the US), because of the risk of the offering losing its Rule 144A private placement status most commonly used to carry out placements of shares to qualified institutional buyers in the US. If direct selling efforts are being carried out in the US by either the issuer, the selling shareholders or the underwriters of the IPO, registration of a prospectus with the US Securities and Exchange Commission would be required.

When the IPO involves an issuer or selling shareholder with outstanding publicly listed securities, any advertising activity may trigger the rules of conduct and regulatory duties imposed by the Market Abuse Regulation (MAR). For instance, to the extent that the market price of the outstanding securities could be affected by the price of the shares of the issuer, the shares which are the subject of the IPO could be deemed to fall within the scope of MAR and therefore any advertising activity may need to follow the market sounding protocols in connection with any pilot-fishing meetings undertaken before the IPO is publicly announced. Additionally, an advertising activity could refer to information that may be considered inside information and therefore to the need to disseminate such information to the market or the prohibition of the recipient to trade with the listed securities.

**8 What sanctions can public enforcers impose for breach of IPO rules? On whom?**

The CNMV is responsible for the enforcement of IPO rules on issuers, selling shareholders, underwriters and other market participants. Sanctions imposed by the CNMV can be appealed before the administrative courts.

It is noteworthy that in order to fulfil its duties under the securities law, the CNMV has been vested with a number of supervisory and investigatory powers. Issuers, selling shareholders and market operators are legally bound to cooperate with the CNMV during its investigations by disclosing and providing all requested information and documentation deemed necessary for its supervisory activity and in the context of enforcement proceedings. Refusal to cooperate with the CNMV is classified as a very serious civil offence.

When the CNMV decides to bring an enforcement action in relation to an IPO (or during the proceedings themselves), it may temporarily suspend the IPO or listing application or any form of related publicity by way of injunctive relief and for a maximum period of 10 consecutive business days on each occasion. Once the investigation is concluded, the CNMV will decide if a sanction is warranted depending on the nature of the regulatory breach, which may be classified as minor, serious or very serious. In this regard, undertaking a public offering of securities without an approved prospectus, illicit IPO publicity in breach of legal requirements, conducting the IPO in breach of the terms disclosed in the prospectus and the omission of relevant information or the disclosure of false or misleading information in the IPO prospectus may be classified pursuant to the Spanish Securities Market Act as very serious or serious civil offences, as the case may be. Infringements may be punished by the CNMV with fines, suspension of the shares from trading or delisting of the shares from the exchange.

Other than in the context of an enforcement procedure, the CNMV may suspend, or require the relevant regulated market to suspend, the securities from trading where it believes there are reasonable grounds for suspecting that the Spanish regulations on prospectuses or admission to listing of securities have been breached, or the situation is such that trading would be detrimental to investors. Should the CNMV come to the conclusion that an IPO conflicts with the mandatory legal provisions, the regulator may revoke the approval of the prospectus and delist the shares that were the subject of the offering.

As regards criminal penalties, while the CNMV does not have standing to prosecute securities-related crimes, if, in the course of its law-enforcement activities, the CNMV finds out about a suspected criminal offence, it must refer the case to the Public Prosecutor. The CNMV will not be a party to the criminal proceedings, but may assist the public prosecutor and the court by producing documentary evidence or issuing expert opinions if required.

Pursuant to the Spanish Criminal Code, the directors of an issuer who deliberately falsify the information disclosed in a prospectus to raise funds from investors will be liable for the punishment of imprisonment and mandatory fines. The issuer itself may also be held liable for securities fraud alongside its directors if the criminal offence was committed for its benefit. In these cases, unless the legal entity evidences that it has an effective compliance programme, it will face mandatory fines depending on the profit obtained and may face other penalties such as the suspension or cessation of its business.

By way of exception to the prevailing general principle, whereby a single regulatory breach may not be punished both as a criminal and as a civil offence, securities fraud offences may attract both criminal and civil penalties.

## Timetable and costs

**9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.**

The process and timeline of an IPO varies significantly depending on the issuer's corporate structure, the complexity of its historical financial information and its sophistication, although it ranges on average between five and six months.

From a legal perspective, the critical and most time-consuming task is drafting the IPO prospectus, which must be approved by the CNMV before the book-building commences. According to Spanish law, the CNMV has up to 20 business days to review the prospectus for an IPO, and such period is reset each time the CNMV submits comments to the draft prospectus. In practice, the review period of an IPO prospectus by the CNMV ranges from eight to 12 weeks.

| 10 weeks | Eight weeks | Two weeks | Four weeks |
|---|---|---|---|
| **Design of the transaction and preparation of legal and marketing materials:**<br>• Appointment of global coordinators, legal counsels, financial advisers, agent bank and other parties<br>• Developing the business plan<br>• Legal, financial and business due diligence of the issuer<br>• Kick-off meeting with the CNMV<br>• Drafting the prospectus and the analysts presentation and early-look investor presentation<br>• IPO readiness workstream<br>• Filing of first draft of the prospectus with the CNMV | **CNMV's review and pre-marketing (equity story):**<br>• Review CNMV's comments and filing of interim drafts of the prospectus<br>• Early-look/ pilot-fishing meeting(s)<br>• Kick-off meeting with the SSEs and Iberclear<br>• Analyst presentation<br>• Publication of the Intention to Float announcement<br>• Publication of research reports<br>• Indicative non-binding price range<br>• Approval of the prospectus by the CNMV<br>• Publication of prospectus on the issuer's website | **Marketing and closing:**<br>• Roadshow meetings and book-building<br>• Pricing<br>• Execution of the underwriting agreement<br>• Release of share allocations to investors<br>• Pre-funding of new shares by global coordinators, if primary IPO<br>• Registration of the notarial deed with the Commercial Registry, if primary IPO<br>• Filing of listing applications with the CNMV and the SSEs | **Closing, trading debut and after-market:**<br>• CNMV/SSEs approve the admission to listing of the shares<br>• Closing and settlement of the IPO<br>• Trading on the SSEs commences<br>• Stabilisation period |

**10 What are the usual costs and fees for conducting an IPO?**

The CNMV, the SSEs and Iberclear disclose complete information about the fees they charge for approving IPO prospectuses, listing securities and registering the shares in book-entry form in Iberclear on their respective websites. In addition to such fees, the issuer will be required to pay notarial and Commercial Registry fees. Moreover, the issuer or the selling shareholders must pay the underwriting commissions and the fees of other advisors and service providers, such as legal counsel, auditors, financial advisors, agent banks, the public relations agency, printers, roadshow consultants and other parties involved. Total costs, depending on the structure of the deal and the deal size may range between three per cent and five per cent of the gross proceeds from of the offering.

## Corporate governance

**11 What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?**

Companies seeking to have their shares listed on the SSEs must make certain amendments to the by-laws and approve new specific rules (such as the regulations on general shareholders' meetings and the board of directors or the internal securities dealing and inside information code) to ensure compliance with the legal provisions governing listed public companies. The IPO prospectus must disclose the principal features of these internal rules.

The issuer must also have regard to the recommendations of the Spanish good corporate governance code issued by the CNMV. While the code constitutes soft law, the issuer will be required to disclose in the prospectus any departures from the recommendations of the code. Moreover, any agreements between shareholders of the issuer governing the exercise of voting rights at a general shareholders' meeting or containing restrictions on the free transferability of shares or bonds that are convertible or exchangeable into shares must be publicly reported

**Update and trends**

See questions 1, 2 and 3.

by filing them with the CNMV and the competent Commercial Registry as a condition for their enforceability.

Spanish listed companies must have a board of directors consisting of between five and 15 directors. Pursuant to consolidated corporate governance standards, a large majority of directors shall be non-executive and an appropriate mix of proprietary and independent directors shall exist; the former representing a proportion equivalent to the stake that they hold in the company and the latter representing, as a rule of thumb, at least one third or, in the case of companies with a large market capitalisation (such as IBEX-35 listed companies), one half of the total number of directors. Moreover, if the chairman of the board of directors is an executive director, the board must appoint a lead independent director with specified functions. Besides any other committees that the board may create, an audit committee and an appointments and remuneration committee must be established, the composition and functions of which are subject to specific rules and recommendations, including the fact that they must be composed of non-executive directors only, with independent directors representing a majority of the committee members, and chaired by an independent director with specific skills in the matters being the business of the committee. For companies with a high market capitalisation, it is recommended to split the appointments committee and the remuneration committee.

Other requirements are to establish a corporate website, and that the general shareholders' meeting approves the remuneration policy of directors as well as any share incentive plans.

**12 Are there special allowances for certain types of new issuers?**

Small and medium-size enterprises (SMEs) may benefit from less demanding requirements when applying for listing on the MAB, being the Spanish non-regulated market for equity securities managed by the SSEs. Listing on the MAB not only avoids the need for issuers to submit to the supervision of the CNMV (both at the time of listing and going forward), but also entails less stringent corporate governance and disclosure requirements.

Nevertheless, should SMEs wish to list on the regulated market of the SSEs, two important allowances introduced by the new EU Prospectus Regulation will come into force in July 2019. First, member states will have the choice of exempting offers of securities with a total consideration of between €1 million and €8 million (under the previous regulation, the threshold was €5 million) over a period of 12 months, provided that the offer is domestic only and no passport into another member state is sought. Second, SMEs without securities admitted to trading on a regulated market who are offering securities to the public for the first time will benefit from reduced prospectus disclosure requirements relevant to companies of that size. In addition, SMEs will have the option of producing a prospectus in a 'question and answer' format, with the design and content details to be set out in delegated acts and accompanied by ESMA guidelines.

**13 What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?**

Prior to an offer being made, there are no specific limitations on the adoption of 'anticipatory' anti-takeover devices to discourage potential hostile bids. From a legal viewpoint, and disregarding any strategies of a purely financial nature, protective measures can essentially be of two kinds: measures set out in the by-laws, and measures in contracts entered into between the company and third parties as well as those arising from shareholders' agreements.

The principal and most effective defensive measure that may be set out in the by-laws of the issuer is the limitation of the number of votes that may be cast by a shareholder, regardless of the ownership percentage actually held by the shareholder, provided however that as a matter of mandatory provisions of Spanish corporate law such limitations no longer apply where, following the takeover offer, the bidder holds 70 per cent or more of the target's share capital. It is also possible to include special quorum requirements for the shareholders' meeting to be quorate, or special majority requirements for reserved matters. This may favour the creation of a blocking minority that may deter hostile bidders not confident of overcoming the relevant hurdle after the bid, but it may also cause practical issues for the target in the ordinary course of its business by making it more difficult for shareholders to take action at the general meeting to pursue strategic initiatives that may be of interest to the company. Special eligibility requirements for directors (such as having been a shareholder of the company over a minimum period of time prior to the appointment) can also be established to hinder the appointment by a hostile bidder of directors. Dual class structures (with founders and core shareholders retaining high-voting shares and offering low-voting shares to investors in the IPO) are also technically possible but are very poorly regarded by the CNMV and proxy advisors.

Likewise, the issuer may enter into agreements containing change of control clauses affecting assets (eg, call options in joint venture agreements), financing arrangements (eg, early redemption and interest step up provisions), issuances of securities (eg, accelerated conversion clauses and downward adjustments of the conversion price of convertible bonds), etc, which, while usually based on legitimate business purposes, may discourage a potential bidder from launching a hostile offer. Also, restrictions upon the voting and transfer of shares may be provided in shareholders' agreements executed by the core shareholders of the issuer , which may restrict or prevent the exercise of voting rights at the general meeting of shareholders of the target company, or the ability of the parties to the shareholders' agreement to tender their shares or convertible securities in the takeover offer.

In the event that a company which has defensive measures in place in its by-laws or within shareholders' agreements and it is the target of a takeover bid, Spanish law enables shareholders acting at the general meeting to approve the neutralisation of such measures (the break-through rule). In this case, any shareholders whose rights have been neutralised or otherwise adversely affected shall be entitled to receive compensation at the target company's expense.

Once a hostile offer is announced, the 'passivity rule' is triggered and the implementation by the board of directors or the senior management of specific 'frustrating actions' (and generally, any anti-takeover decision) would require the approval of the shareholders acting at a general meeting if the decision does not fall within the normal course of the target's business; and its implementation may prevent the success of the bid. The notice period of the extraordinary general meeting which would approve a 'frustrating action' is reduced by law from one month to only 15 days. However, it is unusual in practice for issuers which are the target of a bid to submit any 'frustrating actions' to a shareholder vote.

**Foreign issuers**

**14 What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?**

From a legal perspective, there are no special requirements for foreign issuers at the time of their IPO in Spain. However they may benefit from an expedited listing process if the issuer is a company already listed in another regulated EU market and is seeking a secondary listing in Spain. In such a case, the EU issuer can benefit from the cross-border EU passport mechanism and have its shares listed in another regulated EU market through a simplified, fast-track process.

Conversely, a non-EU company looking to list in Spain as its EU 'home' member state requires the CNMV's review and approval of a prospectus that can be drafted in accordance with the legislation of its country of incorporation, provided that it has been drawn up according to international standards and complies with information requirements equivalent to those of the Prospectus Regulation (for instance, the use of generally accepted accounting principles other than IFRS-EU for the preparation of financial information may be accepted by the CNMV). Otherwise, an EU prospectus will be required.

Also, foreign issuers need to set up appropriate arrangements to permit their shares to be cleared in book-entry form in the fully-dematerialised system managed by Iberclear and its participant entities.

**15 Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?**

Any international IPO that includes an offering in Spain that qualifies as a public offering or is due to be listed on the SSEs will be subject to the requirements applicable to a domestic IPO (provided, however, that if the issuer has published a prospectus approved by the regulatory authority of another EU member state, then the EU passporting procedure can be implemented). Otherwise, the IPO may be structured as a private placement benefiting from an exemption from the obligation to register a prospectus with the CNMV.

The following are not considered public offerings under Spanish securities law:

- offerings of securities exclusively directed to qualified investors;
- offerings of securities directed to fewer than 150 natural or legal persons per member state, without including qualified investors;
- offerings of securities addressed to investors who acquire securities for a total consideration of at least €100,000 each, per offering;
- offerings of securities whose nominal unit value amounts to at least €100,000; and
- offerings of securities amounting to a total of less than €5 million, for which the limit shall be calculated over a period of 12 months.

## Tax

**16 Are there any unique tax issues that are relevant to IPOs in your jurisdiction?**

There are no stamp or other issuance or transfer taxes or other similar duties in Spain regarding the issuance of shares by a Spanish tax resident issuer or the offering and sale by a selling shareholder of existing shares in an IPO. No value added tax is levied either.

Capital gains resulting from the transfer of the shares in a Spanish tax resident issuer by the selling shareholders in an IPO may be subject to tax in Spain according to Spanish tax rules.

The main Spanish tax implications for investors purchasing shares in the IPO will be described in the taxation disclosure section of the IPO prospectus.

## Investor claims

**17 In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?**

See question 18 for a description of who can be sued by investors, and on what grounds.

Pursuant to the Brussels I bis Regulation, civil litigation may be brought in Spain by investors seeking to recover any losses suffered in connection with an IPO when the respondent is domiciled in Spain. A defendant domiciled in another EU member state may be sued in Spain on the basis of contractual liability when the parties have agreed to submit their disputes to Spanish courts or when the contract on which the claim is based was performed in Spain, and, in tort cases, proceedings may be brought in Spain when the harmful event occurred in Spain. Moreover, a defendant not domiciled in an EU member state may be sued before Spanish courts when the dispute is connected to the operations of its branch, agency or other establishment situated in Spain.

Other than under Brussels I bis, a foreign person can be subject to the Spanish jurisdiction when so provided by an international or bilateral treaty signed between Spain and the state in which the defendant is domiciled.

The parties have the right to settle any dispute before the claimant files a statement of claim with the relevant courts. If proceedings commence, litigants have the right to waive, accept and reach agreements at any stage, thereby bringing proceedings to an end, unless contrary to an express legal prohibition or where there is scope for potential damages to third parties or general interests. Proceedings may also terminate when the claimant's claims are settled out of court.

**18 Are class actions possible in IPO-related claims?**

Civil procedure in Spain is mainly designed for individual claimants. While class actions are a predominant feature of US securities litigation (particularly in the context of IPOs), in Spain there are no equivalent actions available for IPO investors to seek redress as a 'class'. Under Spanish civil procedural law, class actions are solely permitted in areas of law that involve the rights or interest of consumers or users (and yet there are differences between the Spanish and US rules of civil procedure).

As an alternative to class actions, IPO investors can resort to joining or consolidating multiple cases into a single proceeding if the damage arises from the same wrongful act. However, unlike US class actions, judgments resulting from joint actions will affect only the litigating investors and will not be binding on every individual investor belonging to the class.

**19 What are the causes of action? Whom can investors sue? And what remedies may investors seek?**

An investor will be entitled to claim contractual liability from the issuer in the event that it breaches any of its contractual obligations or warranties included in the prospectus (such as the shares being offered in the IPO being free from liens, charges, encumbrances and other third-party rights, the failure of the issuer to apply for admission to listing of the IPO shares timely, etc) or the annulment of the contract on the ground of defective consent by the investor as a result of misrepresentation by the issuer (caused either by fraud or an error that must be essential and unavoidable). IPO lawsuits normally include both actions for annulment of contract and liability, with the latter usually being a subsidiary claim in the event that the former is dismissed.

Investors filing a lawsuit for contractual liability may seek either the specific performance or termination of the contract, as well as compensatory damages if it evidences the existence and amount of the damages, the respondent's wilful or negligent conduct and the cause and effect link between the damage and the conduct. Compensation may include not only consequential damages but also loss of profit (which is challenging to evidence). Where the investor seeks the annulment of

URÍA MENÉNDEZ

**Javier Redonet** **javier.redonet@uria.com**
**Alfonso Bernar** **alfonso.bernar@uria.com**

Príncipe de Vergara, 187
Plaza de Rodrigo Uría
28002 Madrid
Spain

Tel: +34 915 860 400
Fax: +34 915 860 403/4
www.uria.com

the contract, the awarding of the annulment entails the reciprocal restitution of the shares and the consideration paid between the investor and the issuer or selling shareholder plus accrued legal interest.

Claims may also be based on prospectus liability which is a specific course of action envisaged by securities legislation not only for IPO investors, but also for any subsequent investors investing in the shares during the validity period of the prospectus, which is 12 months as from its approval. Accordingly, investors can claim damages suffered against the persons liable for the content of the prospectus (but not, unlike as discussed before, the annulment of the purchase of the shares), to the extent that they acquired the securities in good faith and the damages are linked to any material misstatement or omission of information in the prospectus, and provided that the misstatement or omission is not corrected by means of a prospectus supplement that is disclosed to the market prior to the date on which the investor acquires the relevant securities. Persons liable for the prospectus are the issuer, the selling shareholders, the person seeking admission to listing of the securities (if different from the issuer), the directors of all such parties and any other person who accepts liability for the content of particular portions of the prospectus, as long as this acceptance is contained in the prospectus. Global coordinators are liable to only a very limited extent for the information in the prospectus relating to the securities and the offering (not as regards the issuer) and, unlike other parties liable for the content of the prospectus, may assert the due diligence defence.

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