THE INITIAL PUBLIC OFFERINGS LAW REVIEW

THIRD EDITION

Editor
David J Goldschmidt

THE LAWREVIEWS

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PREFACE

Welcome to the third edition of *The Initial Public Offerings Law Review*. This publication introduces the reader to the main stock exchanges around the globe and their related initial public offering (IPO) regulatory environments, and provides insight into the legal and procedural IPO landscapes in 18 different jurisdictions. Each chapter gives a general overview of the IPO process in the region, addresses regulatory and exchange requirements, and presents key offering considerations.

The global IPO landscape is ever-changing. While several of the oldest stock exchanges, such as the New York Stock Exchange and London Stock Exchange, are still at the forefront of the global IPO market, the world's major stock exchanges now are scattered around the globe and many are publicly traded companies themselves. IPOs take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. Aside from general globalisation, shifting investor sentiment and economic, political and regulatory factors have also influenced the development and evolution of the global IPO market.

Virtually all markets around the globe have experienced significant volatility in recent years; however, 2018 marked a year of continued resurgence for many IPO markets. The number of 2018 IPOs and total proceeds raised were led by the Asia-Pacific exchanges, which accounted for almost 50 per cent of deals in terms of both number and deal volume. China alone was responsible for 307 IPOs valued at US$56.7 billion. Many other regions also experienced strong IPO markets in 2018. Despite the temperamental nature of global economics, and the potential repercussions of various ongoing and expected geopolitical events, there is continued cautious optimism for 2019 in terms of both global deal count and proceeds. The global IPO pipeline includes many well-known companies across a range of industries, and it is anticipated that these companies will seek to list on a variety of stock exchanges around the world.

Every exchange operates with its own set of rules and requirements for conducting an IPO. Country-specific regulatory landscapes are often dramatically different among jurisdictions as well. Whether a company is looking to list in its home country or is exploring listing outside of its own jurisdiction, it is important that the company and its management are aware from the outset of the legal requirements as well as potential pitfalls that may impact the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply. This third edition of *The Initial Public Offerings Law Review* introduces the intricacies of taking a company public in these jurisdictions, and serves as a guide for issuers and their directors and management.

David J Goldschmidt
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New York
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Chapter 15

SPAIN

Alfonso Ventoso and Marta Rubio[1]

I INTRODUCTION

The process of going public in Spain has experienced major changes since the early 2000s – getting closer to the European Union's economic and monetary integration and, more recently, moving towards the creation of a capital markets union. During this process, Spain has transposed EU law in a timely manner, achieving full harmonisation of its domestic framework and a competitive position among its European peers.

In this context, and as part of Spain's own efforts to promote market efficiency while ensuring investors' protection, Spanish stock exchanges have gained wider international recognition. In 2014 and 2015, with the European economy gradually recovering after the financial crisis of 2008, Spain enjoyed strong initial public offering (IPO) activity, with 14 companies going public and raising aggregate proceeds of €13.1 billion.[2] However, the domestic political impasse of 2016, with two (and nearly three) general elections, along with international developments, including the US elections and Brexit, took their toll: some IPO candidates cautiously delayed their debut, and Spanish listing activity declined in terms of both number of deals (three IPOs and one listing) and proceeds raised (€1.4 billion).[3] The year 2017 set off to a good start with four IPOs raising €3.4 billion in the first half of the year, but the political uncertainty surrounding Catalonia thwarted the trend and the year ended with only one additional IPO raising €667 million. Transactions in the Spanish market followed the same path in 2018 as the year ended with only three IPOs that raised an aggregate €846 million, two listings of companies that were already listed on foreign markets and several projects being cancelled even after publication of the prospectus. [4]

II GOVERNING RULES

i Main stock exchanges

The Spanish stock exchanges are the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges. These four stock exchanges were created as independent secondary markets in 1831, 1915, 1890 and 1980, respectively. Since 1989, the four stock exchanges have been electronically interconnected in real time through an automated quotation system, and constitute a single secondary market.

1 Alfonso Ventoso is a partner and Marta Rubio is an associate at Uría Menéndez.
2 www.bolsasymercados.es/ing/Studies-Research/Statistics.
3 idem.
4 idem.

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Stock exchanges are the sole regulated market in Spain for equity securities.[5] They are intended for relatively large companies with a minimum capitalisation of €6 million and a minimum free float of around 25 per cent of the company's share capital. In November 2018, 132 companies were listed on the Spanish stock exchanges. Total market capitalisation at that time was approximately €1.06 trillion – €386 billion of which was foreign equity.[6]

Two multilateral trading facilities[7] also operate in Spain: the Alternative Equity Market (MAB) and Latibex. In contrast to regulated markets, multilateral trading facilities can be freely created and their management company can be a market regulator, an investment firm or a special purpose entity.[8]

The MAB was established in 2006 to grant small companies access to capital markets through a less burdensome framework. It is divided into five segments addressed to distinct types of companies:

a growth companies;
b real estate investment trusts (REITs), which, since December 2016, includes a subgroup for developing REITs;
c open-ended investment schemes;
d venture capital firms; and
e hedge funds.

This market is growing rapidly, ending 2018 with an aggregate market capitalisation of €41.9 billion, 41 listed companies in the growth segment and 61 in the REITs segment.[9]

Latibex, an international market for Latin American securities, was created in 1999 to channel European investment towards Latin America. It enjoyed its golden age during the early 2000s, but has gradually declined ever since. In November 2018, securities of only 19 issuers were traded on the platform.

Given the MAB's relatively small size and tailor-made regulations, and Latibex's current decline, this chapter focuses on the regulatory framework and process of IPOs in the Spanish stock exchanges.

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5 Article 4, Paragraph (21) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May on markets in financial instruments defines 'regulated market' as a multilateral system operated or managed by a market operator that brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system, and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems, and that is authorised and functions regularly and in accordance with Title III of the referred Directive.

6 www.bolsasymercados.es/ing/Studies-Research/Statistics.

7 Article 4, Paragraph (22) of Directive 2014/65/EU defines 'multilateral trading facility' as a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial interests – in the system and in accordance with its non-discretionary rules – in a way that results in a contract in accordance with Title II of the referred Directive.

8 Juan Carlos Machuca, 'Spain. International Securities Law and Regulation' in Dennis Campbell (general editor), *International Securities Law and Regulation*, third edition. Huntington, NY: Juris Publishing, 2014.

9 www.bolsasymercados.es/ing/Studies-Research/Statistics.

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ii Overview of listing requirements

As a general rule, Spanish legislation establishes the principle of freedom to issue and offer securities in Spain, and to design the placement procedure without prior administrative approval. Nevertheless, the admission of securities to trading on the Spanish stock exchanges is subject to verification of eligibility requirements of both the issuer and the relevant securities, as well as specific information requirements.

Regarding eligibility requirements, the issuer must be a public limited company – or an equivalent legal form for foreign issuers – validly incorporated and existing in accordance with the laws of the country in which it is domiciled. Further, the issuer's securities that are admitted to trading must grant the same rights to all holders who are in the same position.

Securities for which admission to trading is requested must meet the requirements of the legal framework to which they are subject, and must be represented in book-entry form and be freely transferable. Moreover, application for admission to listing must cover all securities of the same class and, as indicated, a minimum volume of €6 million and a minimum distribution of the securities among the public are required.

Finally, admission to trading on the Spanish stock exchanges is conditional upon submitting documentation to the corresponding regulatory bodies evidencing compliance with the legal framework applicable to the issuer and the securities, the issuer's audited financial statements, and a public offering or listing prospectus.

The authority that verifies the fulfilment of the above requirements in a Spanish listing is the Spanish National Securities Market Commission (CNMV), in its capacity as the supervisor of the Spanish primary and secondary securities markets.

iii Overview of law and regulations

The main regulations governing public offerings and listings in Spain are the consolidated text of the Securities Markets Act (approved by Royal Legislative Decree 4/2015 of 23 October) and Royal Decree 1310/2005 of 4 November on listings, public offerings and the prospectus required for such purposes (RD 1310/2005), both of which implement Directive 2003/71/EC of the European Parliament and of the Council of 4 November (the Prospectus Directive) and Directive 2001/34/EC of the European Parliament and of the Council of 28 May on the admission of securities to official stock exchange listing and on information to be published on those securities. Moreover, Commission Regulation (EC) No. 809/2004 of 29 April (the Prospectus Regulation) implementing the Prospectus Directive and its delegated regulations, as well as Regulation (EU) 2017/1129 of 17 June on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the New Prospectus Regulation), are directly applicable in Spain.

The New Prospectus Regulation was published in July 2017 and will fully repeal the Prospectus Directive and the Prospectus Regulation with effect from 21 July 2019.[10] It was proposed by the European Commission in 2015 on the path towards the capital markets union and was drafted in the form of a regulation in order to set out a regulatory framework uniformly applicable throughout the European Union. The New Prospectus Regulation seeks to ensure investor protection and market efficiency while enhancing the single market for

10 The New Prospectus Regulation entered into force on 20 July 2017 and will be effective as from 21 July 2019 except for various exemptions to the obligation to draft a prospectus, which are applicable since the Regulation's entry into force, and rules relating to offerings exempt from the obligation to be documented with a prospectus owing to their small size, which will be applicable from 21 July 2018.

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capital. Specifically, it intends to both harmonise the disclosure regime when securities are offered or admitted to trading, and reduce regulatory complexity and administrative burdens of those processes.

These regulations should be construed in light of EU Level 3 materials[11] issued occasionally by the European Securities and Markets Authority (ESMA) and its predecessor, the Committee of European Securities Regulators (namely, the recommendations for the consistent implementation of the Prospectus Regulation[12] and the Q&A on prospectuses).

On a separate note, the governing bodies of the stock exchanges have their own internal regulations, which consist of circulars (general decisions and regulations on trading and other primary functions of the stock exchange) and operating instructions (decisions and rules of a specific nature to organise the activities of each department and market members).

Likewise, the Spanish central securities depository (Iberclear) is also subject to its own internal rules and a specific regulatory framework on the clearance, settlement and registry of transactions carried out on Spanish markets. This framework was adapted to EU regulations[13] and Iberclear migrated to TARGET2-Securities – a pan-European settlement platform implemented in the Eurosystem to provide harmonised and borderless core securities settlement services throughout Europe.

III THE OFFERING PROCESS

i General overview of the IPO process

An IPO represents a critical milestone in a company's life. A company going public must not only ensure that it satisfies listing eligibility criteria, but also prepare to meet its concomitant obligations as a listed company.

At the most initial stages, a company contemplating an IPO typically retains an array of advisers to assist on the preparation and execution of the transaction from commercial, legal and accounting perspectives.[14]

First, the company must retain one or, more frequently, multiple investment banks to receive commercial advice on the IPO's design and execution, to market the company's stock and, ultimately, to underwrite the offering. Before contacting potential investors, underwriters and their own advisers will carry out a broad due diligence review of the company to identify any material information that requires public disclosure. In fact, achieving proper disclosure – and thus minimal asymmetries in information – protects both the company and the underwriters from future claims by investors.

11 In 2001, the European Union launched the 'Lamfalussy process', a regulatory approach that established four levels in the legislative procedure: Level 1 consists of framework legislation setting out the core principles adopted by a co-decision of the European Parliament and the Council; Level 2 consists of implementing measures adopted by the European Commission; Level 3 involves cooperation among national supervisory bodies; and, at Level 4, the Commission enforces the timely and correct transposition of EU legislation into domestic law.

12 www.esma.europa.eu/sites/default/files/library/2015/11/11_81.pdf.

13 In particular, Royal Decree 878/2015 of 2 October adapted Spain's clearance, settlement and recording system to Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July on improving securities settlement in the European Union and on central securities depositories.

14 Javier Redonet del Campo, 'Equity' in Raj Panasar and Philip Boeckman (editors) *European Securities Law*, 2nd edition. Oxford: Oxford University Press, 2014, pp. 79–116.

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Second, the company must retain legal counsel (domestic and, if necessary, international) to participate in the IPO process by:

a helping the company meet listing eligibility requirements;
b drafting all necessary documentation, including corporate documents and resolutions, the prospectus and other regulatory applications;
c liaising with the CNMV, the stock exchanges and other authorities;
d assisting the company in negotiations with the underwriters;
e contributing to the due diligence review; and
f providing legal opinions to the underwriters on various legal aspects of the transaction.

As indicated, the underwriters must also retain legal counsel mainly to conduct the company's due diligence review, draft the underwriting agreement, assist in the preparation of marketing materials and provide legal opinions to the underwriters.

Third, the company's auditors will need to audit the company's financial statements for the preceding three fiscal years[15] and ensure compliance with accounting rules. The company may also request that the auditors audit or review interim financial statements, if any, and other special financial information such as *pro forma* information or financial forecasts or estimates (in this case, with the scope and limitations established in the Prospectus Regulation). Lastly, the auditors will issue comfort letters for the underwriters confirming that the prospectus accurately reflects the company's financial information and that, to their knowledge, no material change has occurred from the date of the most recently audited or reviewed financial statements.

Moreover, a number of recent IPOs in Spain involved the support of independent financial advisers who assisted the companies throughout the process, alleviating the inevitably demanding workload in such deals.

Towards the end of the preparation phase, a company going public typically engages other specialists such as an agent bank to settle the transaction, a public relations agency to assist with press releases, a financial printer to print and distribute the prospectus or offering memorandum, and a roadshow consultant.

The process and timeline of an IPO will vary significantly depending on the IPO candidate's corporate structure, financial history and sophistication, although it will rarely last less than four months.

From a legal perspective, the main, most laborious task is drafting the required prospectus, which must be approved by the CNMV before the securities can be admitted to trading on the Spanish stock exchanges.

Prospectuses are divided into three sections: a share registration document disclosing material information about the issuer such as its business, financial situation, organisational structure, management and shareholders; a securities note describing the offered securities and the placement procedure; and a summary of both other sections.[16] Accordingly, its drafting requires the active involvement of all parties, naturally starting with the company but also with the underwriters (mainly to advise on the presentation of the company's business and strategy and the sector in which it operates), the auditors (to verify that financial information

15 Pursuant to Article 12.2 of RD 1310/2005, the CNMV may accept that financial statements cover a shorter period provided that investors are supplied with the necessary information to make an informed decision on the issuer and the securities.

16 See Annexes I, III and XXII to the Prospectus Regulation.

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is accurately disclosed) and the legal advisers (to draft legal sections and provide general advice on the entire document). Even more, the prospectus is prepared in close collaboration with the CNMV, which reviews interim drafts until the document satisfies, at its discretion, all regulatory requirements.[17] Only then will the prospectus be approved and registered with the CNMV and ready for distribution to the public. Since 2014, most prospectuses are drafted in English following an international format that allows not drafting an international memorandum to market the company's stock among foreign investors. This eliminates any potential inconsistencies or discrepancies between both documents and normally reduces the deal's workload.

Even in IPOs solely addressed to qualified investors[18] (which would not qualify as public offerings,[19] and are exempt from publishing an offering prospectus), it is market practice in Spain that prospectuses are registered with the CNMV before the underwriters begin building the book of investors. As these prospectuses later serve as the required listing prospectuses,[20] such early registration provides a great degree of certainty to the process in terms of timing and symmetry of information between the marketing materials and the prospectus.

Upon completion of the book-building period, which typically takes 10 days to two weeks, the company and the underwriters determine the IPO's final price[21] based on investors' interest, execute the underwriting agreement and allocate the shares among final investors. Within 36 to 48 hours of confirmation of the shares' final allocation (the date of which is considered the transaction date) and delivery of settlement details, shares are admitted to listing by the CNMV and the Spanish stock exchanges. In IPOs, shares typically start trading on the Spanish stock exchanges a couple of hours following admission by the CNMV and the offering is settled within two days of the transaction date.

ii Pitfalls and considerations

During the first stages of the IPO process, the company and its advisers must design the transaction and, potentially, adapt the issuer's corporate structure to the envisaged deal. A variety of issues must be considered at this stage.

First, the IPO may consist of either a primary or secondary offering. In a primary offering, the company going public offers newly issued shares and receives the proceeds, whereas in a secondary offering, existing shares are offered by one or multiple selling shareholders who wish to reduce their stake in – if not exit – the company (or potentially by the issuer if treasury shares are offered). Combined transactions in which the company and shareholders share the offer proceeds are also common in Spanish markets.

The company must also outline, with the underwriters' advice, the scope of business that may appeal to potential investors, and reorganise its corporate structure accordingly. In doing so, the impact on the deal's schedule should be assessed.

17 Article 24 of RD 1310/2005 establishes a 10-working-day period for the CNMV to approve the prospectus (or 20 working days if no securities of the issuer have previously been offered to the public or admitted to trading on a regulated market). However, this period restarts each time the CNMV reasonably requests supplementary information.

18 As defined in Article 2.1 of the Prospectus Directive and Article 39 of RD 1310/2005.

19 Article 38.1 of RD 1310/2005.

20 Article 13 of RD 1310/2005.

21 The prospectus only includes a non-binding price range of the shares.

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Likewise, the company must choose its target investors. The offering may be addressed solely to qualified investors (institutional offering), the general public (retail offering) or both. The ultimate choice should be made taking into account that institutional offerings are typically more flexible and require a lower level of disclosure whereas retail offerings provide a wider pool of funds (although they tend to be more closely scrutinised). Moreover, institutional offerings may include a family and friends tranche addressed to up to 150 investors, which allows the issuer to benefit from the flexibility of institutional offerings while enlarging the target public.[22]

Another significant factor when designing an IPO is its territorial scope, as international transactions must meet additional obligations. Apart from any requirements arising from dual or multiple listings (which are less common in the Spanish market), any international deal is subject to the extraterritoriality of US securities law. In fact, the US Securities Act of 1933 requires that any offering of securities – whether or not apparently related to the United States – be registered with the US supervisor except under various exemptions, two of which are highlighted here. First, a deal may be exempt from registration under Regulation S if it is an 'offshore transaction' and no direct selling efforts are made in the United States by either the company, its shareholders, the underwriters or their respective affiliates. Second, a deal may be exempt from registration under Rule 144A of the Securities Act of 1933 if it is addressed exclusively to qualified institutional buyers, as defined therein.[23] The nature of extraterritoriality makes it necessary to engage US legal advisers in any international IPO.

From a contractual perspective, a company going public must determine whether it must obtain waivers from third parties, or amend or terminate its contracts with related parties, shareholders, partners or others in view of its imminent listing.[24] In general, the company should ensure that any related-party transaction is properly documented, carried out at arm's length and made public. As for shareholders' agreements, any agreement restricting the free transferability of the company's shares or regulating shareholders' voting rights must be disclosed to the CNMV when the company becomes public.[25] Further, any concerted action among shareholders should be performed prior to the IPO to avoid the obligation to launch a mandatory tender offer for the company's entire share capital.[26]

On a separate note, a company contemplating an IPO must comply with various rules concerning publicity on the transaction. In short, any information on the transaction that is disclosed orally or in writing for advertising or other purposes must be consistent with the information contained in the prospectus[27] (which, in turn, must include 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

22 Such option was first implemented in Spain in 2017.

23 Michael Willisch, 'Rule 144A and Regulation S. An introduction for Spanish Companies' in *Revista de derecho del mercado de valores* 188-4113, 2008, pp. 457–470.

24 See Section IV.

25 Article 531 of the consolidated text of the Companies Act, approved by Royal Legislative Decree 1/2010 of 2 July (the Spanish Companies Act).

26 Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids and Royal Decree 1066/2007 of 27 July on the rules applicable to tender offer for securities.

27 Article 15.4 of the Prospectus Directive and Article 12 of Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing the Prospectus Directive (Delegated Regulation (EU) 2016/301).

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the securities underlying the IPO).[28] This principle enables the company to control the information on which investors will base their investment decision, thereby mitigating the risk of future claims by investors. Thus, any marketing materials – usually prepared by the underwriters – must be thoroughly reviewed from this perspective.

This issue caused some controversy in 2016, when a new EU regulation developing the concept of consistency entered into force.[29] In particular, the new EU regulation prevents disclosure of 'alternative performance measures' (APMs) concerning the issuer unless they are included in the prospectus. APMs are financial measures on performance, financial position or cash flows that are not prepared under the applicable financial reporting standards (which include measures as widespread as earnings before interest, tax, depreciation and amortisation). Coupled with ESMA guidelines on the disclosure of alternative performance measures in the prospectus[30] and the CNMV's efforts to observe them, it seemed it would restrict the way in which the company – and more probably the bankers – wish to present the company's financial situation. Issuers nevertheless promptly started to include APMs in their financial statements and auditors have made all efforts to reconcile them with financial statement items, which enables their disclosure in the IPO prospectus and thus in marketing materials.

Authorities' focus has more recently shifted to defining statements or indicators that can be taken as profit forecasts or estimates, and differentiating them from other information as objectives or trend information. The main disadvantages of disclosing profit forecasts or estimates for issuers are increased liability towards investors, as well as higher transaction costs in terms of price and time given that the Prospectus Regulation requires that issuers who disclose profit forecasts in their prospectuses attach a report prepared by independent accountants or auditors stating that in their opinion the forecast or estimate has been compiled properly on the stated basis and that the basis is consistent with the issuer's accounting policies.[31]

iii Considerations for foreign issuers

The Prospectus Directive created a cross-border passport mechanism that validates any prospectus approved in a given Member State (the 'home' Member State) throughout the European Union, subject only to the condition that the home Member State certifies the approval of the prospectus to any host Member State and the ESMA in accordance with the Prospectus Directive. The host Member State normally requests the translation of the prospectus into a language accepted by it or a language customarily used in the sphere of international finance. The summary of the prospectus will be translated into the official language of the host Member State.[32]

28 Article 5 of the Prospectus Directive and Article 16 of RD 1310/2005.

29 Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing the Prospectus Directive with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending the Prospectus Regulation.

30 ESMA Guidelines on Alternative Performance Measures, which were most recently updated on 5 October 2015, recommend, among other things, presenting these measures in a clear, comprehensible way and with less prominence or emphasis than measures directly stemming from financial statements; reconciling them with the financial statements; explaining their relevance and reliability; and providing comparisons for the corresponding previous years.

31 ESMA's Q&A on prospectuses was last updated in March 2018 to define and provide examples of profit forecasts according to the provisions of the Prospectus Regulation.

32 www.esma.europa.eu/sites/default/files/library/2015/11/2014-esma-342_languages_accepted_for_the_purpose_of_the_scrutiny_of_the_prospectus.pdf.

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This expeditious process has proven highly beneficial for companies undertaking dual or multiple listings in regulated EU markets. The new prospectus regulation, mentioned in Section II.iii, seeks to strengthen this mechanism in order to ultimately ensure the effective functioning of the capital markets union.

Conversely, an IPO of a company incorporated in a country outside the European Union that identifies Spain as the home Member State requires the CNMV's approval. In this case, the prospectus may be drawn up in accordance with the legislation of that country if it complies with international standards and imposes information requirements equivalent to those in the Prospectus Regulation.[33]

IV POST-IPO REQUIREMENTS

Spanish law imposes additional obligations on public companies to ensure adequate levels of transparency, accountability and good governance, the majority of which are based on EU regulations. The following is a non-exhaustive summary of the main obligations of Spanish companies with shares listed on a regulated market (and, eventually, of all listed companies having identified Spain as their home Member State).

In terms of corporate governance, Spanish companies with shares listed on a regulated market are subject to various special provisions concerning their shares, general shareholders' meetings and management.[34] For instance, they must establish a corporate website and approve specific internal regulations, including regulations on general shareholders' meetings and the board of directors. These companies are mandatorily managed by a board of directors, the composition and functioning of which is subject to specific rules, and they are required to create an audit committee and an appointments and remunerations committee.

With regard to disclosure requirements, Spanish companies with shares listed on a regulated market must periodically approve and publish an array of documentation on their corporate websites as well as on that of the CNMV:[35]

a audited annual financial statements, half-year financial statements (which may be voluntarily audited or reviewed by the company's auditor) and quarterly financial statements;[36]

b an annual corporate governance report detailing the structure of the company's governing system and how it functions in practice;[37] and

c an annual report on directors' remuneration describing remuneration received (or to be received) by directors in connection with their position or for fulfilling their executive duties, as well as policy on the remuneration of directors.

33 Article 20 of the Prospectus Directive and Article 31 of RD 1310/2005.

34 Title XIV, 'Public listed companies', of the Spanish Companies Act.

35 See Directive 2004/109/EC of 15 December on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Royal Decree 1362/2007 of 19 October on transparency requirements.

36 In each case, individual and, if applicable, consolidated financial statements.

37 Among others, the annual corporate governance report must include a list of all related-party transactions carried out with the company's shareholders, directors and senior managers or within the company's group during the relevant period.

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From a market-abuse perspective,[38] companies with shares traded on the Spanish stock exchanges must disclose, as soon as possible, all inside information[39] directly pertaining to the company. Inside information is typically disclosed by notifying the CNMV and posting the information on the company's website. However, disclosure of inside information may be delayed if immediate disclosure is likely to prejudice the issuer's legitimate interests, the delay is not likely to mislead the public and the company is able to ensure the information's confidentiality. Moreover, these companies may not operate on the basis of inside information (which also applies to treasury-stock transactions), and they must disclose any acquisition of treasury shares exceeding, in aggregate, 1 per cent of the company's voting rights.

Shareholders and directors of companies having identified Spain as the home Member State are also subject to various disclosure obligations, which primarily relate to their stake in the company's share capital, net short positions and remuneration systems.

V OUTLOOK AND CONCLUSION

Looking forward, there are some IPO projects ongoing but the outlook is rather uncertain. Although macroeconomic conditions are increasingly improving, domestic political distress (mainly arising from the national government's fragmentation) along with international geopolitical uncertainties relating to, among others, the Brexit outcome and US external-trade policies, have led to a decrease in investor confidence and hinder the return of Spanish listing activity to robust, sustainable levels.

Nevertheless, in the medium term, the implementation of the envisaged measures under the capital markets union should simplify and reduce the costs of the IPO process in Spain – and throughout the European Union – and ease small companies' access to alternative sources of funding.

38 See Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April on market abuse and its implementing regulations.

39 Inside information is information of a precise nature that is not public and that directly or indirectly relates to the company or financial instruments issued by it and that, if it were made public, would be likely to have a significant effect on the prices of the instruments issued by the company.

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Appendix 1

ABOUT THE AUTHORS

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Uría Menéndez

Alfonso Ventoso joined Uría Menéndez in September 2002 and has been a partner since 2013. Prior to this, he amassed experience in real estate law and litigation, and worked in London in the insolvency department of a UK firm.

From January to July 2009, he was seconded to Davis Polk & Wardwell in New York, where he was assigned to the capital markets practice group as part of the firm's Foreign Temporary Associates Programme.

Alfonso's practice is focused mainly on equity capital markets (including listings and de-listings, public offerings and block trades), and on providing general advice to investment firms, banks and listed companies on the regulatory aspects relating to securities markets and corporate governance.

In addition, Alfonso advises on M&A transactions, spin-offs, takeover bids, and the sale and acquisition of private companies.

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