THE INITIAL PUBLIC OFFERINGS LAW REVIEW

SIXTH EDITION

Editor
Marco Georg Carbonare

THE LAWREVIEWS

THE INITIAL PUBLIC OFFERINGS LAW REVIEW

SIXTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in August 2022
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Marco Georg Carbonare

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADER
Katie Hodgetts

SENIOR BUSINESS DEVELOPMENT MANAGER
Rebecca Mogridge

BUSINESS DEVELOPMENT MANAGERS
Joey Kwok and Juan Hincapie

BUSINESS DEVELOPMENT ASSOCIATE
Archie McEwan

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Georgia Goldberg

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Keely Shannon

SUBEDITOR
Tessa Brummitt

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK

www.TheLawReviews.co.uk

ISBN 978-1-80449-104-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ALLEN & GLEDHILL LLP

ALLEN & OVERY

ALLFUNDS

BAE, KIM & LEE LLC

BOWMANS

DLA PIPER FINLAND ATTORNEYS LTD

GANADO ADVOCATES

HAN KUN LAW OFFICES

LATHAM & WATKINS

LEE AND LI, ATTORNEYS-AT-LAW

LINKLATERS LLP

MAPLES GROUP

MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

TJAJO & PARTNERS

TRILEGAL

TSVETKOVA BEBOV & PARTNERS, MEMBER OF EVERSHEDS SUTHERLAND

URÍA MENÉNDEZ

WALDER WYSS LTD

CONTENTS

PREFACE

The IPO market to date in 2022 has been difficult across most major jurisdictions, driven primarily by a deterioration of equity capital markets since the beginning of the year, which has been caused by a number of reasons. In particular, in the United States the increase in federal interest rates to address inflationary pressures had a negative impact on equity capital markets generally and IPOs. In Europe, the war in Ukraine and related issues, including uncertainty regarding security of energy supply, contributed to issues caused by deteriorating macroeconomic conditions. As a result, the IPO activity in the first half of 2022 dropped significantly, even when compared not only to the very strong IPO year in 2021 but the average over the past 10 years.

However, the pipeline for IPOs in key markets globally remains very strong, with a large number of issuers across various sectors waiting for improvements in the markets.

Interest in cross-border listings, where IPO candidates decide to pursue a listing outside their home market, remains strong. This trend is driven by a number of factors, including considerations regarding valuation, sector-related considerations and the large number of US-listed special purpose acquisition companies looking for targets abroad. It is, therefore, increasingly necessary to consider the listing and regulatory requirements of different stock exchanges, as well as IPO market practices in different jurisdictions.

This publication provides an overview of the main rules and regulations applying to IPOs in different jurisdictions across the globe and offers great insights into local market practices.

I would like to thank each author for their contribution to the sixth edition of *The Initial Public Offerings Law Review*.

Marco Georg Carbonare
Linklaters LLP
Frankfurt
July 2022

Chapter 16

SPAIN

Alfonso Ventoso and Marta Rubio[1]

I INTRODUCTION

The process of going public in Spain has experienced major changes since the early 2000s, mainly because of the adoption of EU regulations seeking to achieve the European Union's economic and monetary integration and, more recently, the creation of a capital markets union. During this process, Spain has applied 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 the past few years, concerns regarding the domestic political spectrum, along with international developments such as US external policies, Brexit and later the covid-19 pandemic, have taken their toll. From 2016, Spanish listing activity declined in terms of both the number of deals in the main market and the proceeds raised, hitting rock bottom in 2019, with no initial public offerings (IPOs) and only three listings in the Spanish main market.

The outlook remains uncertain in 2022, with only one listing completed in the first semester and an uncertain number of transactions in the pipeline for the second half of the year.

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.

Stock exchanges are the sole regulated market in Spain for equity securities.[2] They are intended for relatively large companies (the minimum starting capitalisation is €6 million). A minimum free float of 25 per cent of the company's share capital is also required to apply for the listing.

---

1 Alfonso Ventoso is a partner at Uría Menéndez and Marta Rubio is a senior legal counsel at Allfunds.

2 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 and/or managed by a market operator, which 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

In December 2021, 124 companies were listed on the Spanish stock exchanges through the automated system. Total market capitalisation at that time was approximately €1,082 billion, €348 billion of which was foreign equity.[3]

Two multilateral trading facilities[4] for equity securities also operate in Spain: BME MTF Equity (formerly called the Alternative Equity Market or MAB) and Latibex. In contrast with 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.[5]

BME MTF Equity was established in 2006 to grant small companies access to capital markets through a less burdensome framework. It is divided into three segments, which are addressed to distinct types of companies:

a growth companies, including real estate investment trusts (REITs) (previously listed on a separate segment);

b collective investment institutions; and

c venture capital firms.

This market is growing rapidly, ending 2021 with an aggregate market capitalisation of €48.6 billion, 50 listed growth companies and 77 listed REITs.[6]

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 December 2021, securities of only 19 issuers were traded on the platform.

Given BME'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.

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.

---

its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of the referred Directive.

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

4 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.

5 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.

6 See footnote 3.

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. Moreover, application for admission to listing must cover all securities of the same class. It is necessary to have a minimum starting capitalisation of €6 million, and at least 25 per cent of the share capital must be distributed among the public.

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 Law (approved by Royal Legislative Decree 4/2015 of 23 October) and 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 Prospectus Regulation), together with its implementing regulations, including Commission Delegated Regulations (EU) 2021/528 of 16 December 2020 and 2019/979 and 2019/980 of 14 March 2019, which are directly applicable in Spain.

The Prospectus Regulation was published in July 2017 and has been fully effective since 21 July 2019. 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 to set out a regulatory framework uniformly applicable throughout the European Union.

The Prospectus Regulation seeks to ensure investor protection and market efficiency while enhancing the single market for 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[7] issued occasionally by the European Securities and Markets Authority (ESMA) and its predecessor, the Committee of European Securities Regulators (namely, the Q&A on prospectuses, the guidelines on risk factors and the guidelines on disclosure requirements under the Prospectus Regulation).[8]

On a separate note, the governing bodies of the stock exchanges have their own internal rules, which comprise a regulation, 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).

7 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.

8 https://www.esma.europa.eu/databases-library/esma-library.

Likewise, the Spanish central securities depository (Iberclear) is 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,[9] 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.[10]

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. Achieving proper disclosure – and, thus, minimal asymmetries in information – protects both the company and the underwriters from future claims by investors.

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 (or such shorter period as the issuer has been in operation) 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

9 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.

10 Javier Redonet Sánchez del Campo, 'Equity', in Raj Panasar and Philip Boeckman (eds.) *European Securities Law, second edition*. Oxford: Oxford University Press, 2014, pp. 79–116.

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.

Several IPOs in Spain in the past years also 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 offered or 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.[11] 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 industry in which it operates), the auditors (to verify that financial information is accurately disclosed) and the legal advisers (to draft legal sections and provide general advice on the entire document).

The prospectus is scrutinised by the CNMV, which reviews interim drafts until the document satisfies, at its discretion, all regulatory requirements.[12] Only then will the prospectus be approved and registered with the CNMV and ready for distribution to the public.

Since 2014, most prospectuses have been drafted in English following an international format, thus avoiding the need to produce two separate offering documents: a Spanish language prospectus for the domestic offering and listing and an international offering memorandum to market the company's stock among foreign investors. This eliminates any potential inconsistencies or discrepancies between both documents and usually reduces the deal's workload.

Even in IPOs solely addressed to qualified investors[13] (which are exempt from publishing an offering prospectus),[14] it is market practice in Spain that prospectuses are registered with

11 The content of each section is regulated in Annexes 1 and 11 to Commission Delegated Regulation (EU) 2019/980 of 14 March supplementing the Prospectus Regulation in respect of the format, scrutiny and approval of the public offering or listing prospectuses.

12 Article 20 of the Prospectus Regulation 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, the 10-working-day period restarts each time the CNMV reasonably requests supplementary information.

13 As defined in Article 2(e) of the Prospectus Regulation.

14 Article 1(4) of the Prospectus Regulation.

the CNMV before the underwriters begin building the book of investors. As the prospectuses later serve as the required listing prospectuses,[15] 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[16] 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 comprise 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 and on the issuer's historical financial information should be assessed.

Likewise, the company must choose its target investors. The offering may be addressed solely to qualified investors (institutional offering)or the general public (retail offering), or both. The ultimate choice should be made taking into account the fact that institutional offerings are typically more flexible and require a lower level of disclosure, whereas retail offerings provide a wider pool of funds but 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.[17]

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, although there are some relatively recent precedents),[18] any international deal is subject to the extraterritoriality of US securities law.

The US Securities Act of 1933 requires that any offering of securities – whether apparently related to the United States or not – be registered with the US supervisor except

15 Article 1 of the Prospectus Regulation.

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

17 This option was first implemented in Spain in 2017.

18 Berkeley Energía and AmRest Holding in 2018.

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.[19] 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.[20] 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.[21] 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.[22]

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[23] (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, the rights attached to the securities underlying the IPO, the reasons of the transaction and its impact on the issuer).[24]

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.

In particular, these regulations prevent 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). This issue caused some controversy in 2016 when first regulated.[25] The reason was that, coupled with ESMA guidelines on the

19 Michael Willisch, 'Rule 144A and Regulation S. An introduction for Spanish Companies', *Revista de derecho del mercado de valores*, No. 2, 2008, pp. 457–470.

20 See Section IV.

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

22 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.

23 Article 22 of the Prospectus Regulation and Article 16 of Commission Delegated Regulation (EU) 2019/979 of 14 March supplementing the Prospectus Regulation.

24 Article 6 of the Prospectus Regulation.

25 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, today repealed.

disclosure of alternative performance measures in the prospectus[26] and the CNMV's efforts to observe them, it seemed it would restrict the way in which the issuer – and, more likely, the underwriters – could present the company's financial situation. Nevertheless, issuers 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 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 exposure to liability towards investors, as well as higher transaction costs in terms of price and time relating to the drafting of the relevant forecasts or estimates. In this regard, the Prospectus Regulation requires that issuers who disclose profit forecasts in their prospectuses include a statement that the forecast or estimate has been compiled and prepared on a basis that is both comparable with the historical financial information and consistent with the issuer's accounting policies.

iii Considerations for foreign issuers

The Prospectus Regulation sets out 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 Regulation.

The prospectus must be drafted in a language accepted by the authorities of the home and host Member States or in a language customarily used in the sphere of international finance. The host Member State must require that the summary of the prospectus be translated into an official language of the host Member State or any other language accepted by it, but may not require the translation of other sections of the prospectus.[27]

This expeditious process has proven highly beneficial for companies undertaking dual or multiple listings in regulated EU markets. Its ultimate goal is to ensure the effective functioning of the capital markets union.

Conversely, an IPO of a company incorporated in a country outside the European Union that designates 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 and provided that this country's and Spain's authorities have entered into a cooperation agreement.[28]

26 The 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. In December 2019, ESMA assessed compliance with the Guidelines and concluded that there is still room for improvement (ESMA press release, 'ESMA: EU issuers need to improve their disclosure of alternative performance measures test' of 20 December 2019).

27 Article 27 of the Prospectus Regulation.

28 Article 29 of the Prospectus Regulation.

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.[29] 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 must 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,[30] as well as on that of the CNMV, such as:

a audited annual financial statements and half-year financial statements (which may be voluntarily audited or reviewed by the company's auditor);[31]

b an annual corporate governance report detailing the structure of the company's governing system and how it functions in practice; 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 a policy on the remuneration of directors.

From a market-abuse perspective,[32] companies with shares traded on the Spanish stock exchanges must disclose, as soon as possible, all inside information[33] 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.

Those companies may not operate based on 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.

Other financial or corporate information not qualifying as inside information but still interesting to investors is also subject to disclosure as 'other relevant information'.

29 Title XIV, 'Public listed companies', of the Spanish Companies Law.

30 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, as amended and Royal Decree 1362/2007 of 19 October on transparency requirements.

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

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

33 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.

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, and remuneration systems.

V OUTLOOK AND CONCLUSION

Looking forward, there are some IPO projects that are ongoing, especially those suspended in 2021 and linked with the renewable energy sector. However, equity capital markets activity in Spain is unclear owing to the current macroeconomic conditions and market volatility driven by the conflict in Ukraine and inflation.

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.

Appendix 1

ABOUT THE AUTHORS

ALFONSO VENTOSO

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 a US firm in New York, where he was assigned to the capital markets practice group.

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

In addition, Alfonso has ample expertise in M&A deals involving listed or financial companies, takeover bids, and the issue of debt securities, especially hybrid instruments.

URÍA MENÉNDEZ

c/Príncipe de Vergara, 187
Plaza de Rodrigo Uría
28002 Madrid
Spain
Tel: +34 915 860 400
Fax: +34 915 860 403
alfonso.ventoso@uria.com
www.uria.com

MARTA RUBIO

Allfunds

Marta Rubio joined Allfunds as senior legal counsel in June 2021. She is responsible for its corporate governance and deals with regulatory issues concerning securities law.

Prior to that, Marta worked at Uría Menéndez for nearly seven years. Her practice focused on corporate and capital markets law, with experience in initial public offerings, and issues and offers of equity securities. She also advised in various tender offers and M&A transactions, as well as in restructuring transactions involving private companies.

ALLFUNDS

Calle de los Padres Dominicos, 7
28050 Madrid
Spain
Tel: +34 91 274 64 00
marta.rubio@allfunds.com
www.allfunds.com

ISBN 978-1-80449-104-1