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### **Introduction**

In 2007 Q2 the number of new financial provisions was small relative to preceding periods.

First, a guideline of the European Central Bank (ECB) was published to update and readjust the level of breakdown of the statistics on the balance of payments, international investment position and international reserves that have to be reported by national central banks (NCBs) to the ECB.

Second, the regimes governing takeover bids and issuer transparency were changed to write partially into Spanish law the most recent Community legislation and to change certain aspects of the regime now in place to ensure that takeover bids take place in a complete legal framework and with full legal certainty.

Finally, a procedure has been set in place for electronic transmission of statistical and accounting documentation that insurance companies, pension fund management companies and insurance and reinsurance brokers must, under the specific legislation applicable to them, provide to the Directorate General of Insurance and Pension Funds.

### **Guideline of the European Central Bank on the balance of payments**

*Guideline ECB/2007/3 of 31 May 2007* (OJ of 20 June) amending Guideline ECB/2004/15 of 16 July 2004 on the statistical reporting requirements of the European Central Bank in the field of balance of payments and international investment position statistics, and the international reserves template, was published in order to update the data requirements in these areas and readjust the level of breakdown required in the latter guideline.

Regarding the collection of portfolio investment data, the Guideline continues the aim of establishing common criteria for the compilation of this information in the whole of the euro area. In this respect, it stipulates that, from March 2008, portfolio investment collection systems shall conform to one of the models set out in Annex VI of Guideline ECB/2004/15, and adds that the chosen model may be phased in to enable the NCB to reach the target coverage<sup>1</sup> at the latest by March 2009, in relation to December 2008 stocks.

Also, certain changes were made to Guideline ECB/2004/15 to provide for future enlargement of the euro area in relation to the compilation and presentation of back data of the aggregate euro area in its new composition on the balance of payments (including the seasonally adjusted balance of payments current account) and international investment position. In respect of any Member State that adopts the euro on or after 1 January 2007, both the NCB of that Member State and the NCBs of all other participating Member States at the time such Member State adopts the euro shall provide the ECB with back data corresponding to the data required under the annexes of this Guideline, to enable the compilation of aggregates covering the euro area in its new composition. The earliest reference period to be reported

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1. The coverage sought is as follows: the stocks of securities submitted to the entity entrusted with compiling aggregate national data, i.e. without using standard codes (ISIN or similar) should not exceed 15% of the total stock of investment portfolio assets and liabilities. This threshold should be used as a guide in assessing the coverage of the systems of the Member States.

shall depend on the date the Member State in question joined the European Union (EU), as follows:

- a) If the Member State that adopts the euro joined the EU before May 2004, the back data shall cover, as a minimum, the period from 1999;
- b) If the Member State that adopts the euro joined the EU in May 2004, the back data shall cover, as a minimum, the period from 2004;
- c) If the Member State that adopts the euro joined the EU after May 2004, the back data shall cover, as a minimum, the period from the date on which that Member State joined the EU.

***Reform of the regime governing takeover bids and issuer transparency***

Law 24/1988 of 28 July 1988<sup>2</sup> on the securities market originally contained the legal regime applicable to takeover bids and to the information and transparency obligations of quoted companies. These information and transparency obligations were subsequently broadened by Law 37/1998 of 16 November 1998 reforming Law 24/1988 on the securities market and by Law 44/2002 of 22 November 2002<sup>3</sup> on financial system reform measures.

The implementing provisions of the law on takeover bids are contained in Royal Decree 1197/1991 of 26 July 1991<sup>4</sup> on the regime governing takeover bids, later amended by Royal Decree 432/2003 of 11 April 2003<sup>5</sup>, for the purpose of improving the protection of minority shareholders when there are changes of control of quoted companies.

Subsequently, Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (known as the Takeover Directive)<sup>6</sup> and Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (known as the Transparency Directive)<sup>7</sup> were published.

Recently, Law 6/2007 of 12 April 2007 (BOE of 13 April) reformed Law 24/1988 of 28 July 1988 on the securities market to modify the regime governing takeover bids and issuer transparency. It made certain amendments to the latter law in order to transpose partially into Spanish law the two aforementioned directives and to change certain aspects of the current regime so as to ensure that takeover bids are conducted in a complete legal framework and with full legal certainty.

**REFORM OF THE LEGAL REGIME GOVERNING TAKEOVER BIDS**

Law 6/2007 amends the securities market law to set out the cases in which it is mandatory to make an offer for all the capital of a company (mandatory bid), introduces the right of squeeze-out and regulates the obligations of the board of directors of a company subject to a takeover

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2. See "Regulación Financiera: tercer trimestre de 1988", Boletín económica, Banco de España, October 1988, pp. 61-62. 3. See "Financial Regulation: 2002 Q4", Economic Bulletin, January 2003, Banco de España, pp. 101-113. 4. See "Regulación Financiera: tercer trimestre de 1991", Boletín económica, Banco de España, October 1988, pp. 57-58. 5. See "Financial Regulation: 2003 Q2", Economic Bulletin, July 2003, Banco de España, pp. 82-84. 6. Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (known as the Takeover Directive) established a common minimum framework in the Member States for the regulation of takeover bids for companies whose shares are at least partially admitted to trading on a regulated market, with a view to protecting the holders of securities admitted to trading on a regulated market in a Member State, in particular those with minority holdings, when there has been a takeover bid for or a change of control of the company. 7. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (known as the Transparency Directive) enhanced the transparency of financial markets by establishing rules to improve the information disclosed to the market by issuers whose securities are traded on regulated markets.

bid and the possibility of taking defensive measures. Also, the partial offers (for 10% of capital) envisaged in Royal Decree 432/2003 have been derogated.

The main new developments (see Table 1 for a comparison with the previous law) are as follows:

#### Mandatory bid

Law 6/2007 establishes that an entity that has acquired control of a quoted company must make an offer to all the holders of that company's shares or other securities directly or indirectly carrying the right to subscribe or purchase said shares, for the purchase of all their holdings at an equitable price<sup>8</sup>. This same obligation applies, in certain cases, to companies whose registered office is not in Spain and whose securities are not traded on a regulated market in the EU Member State in which the company's registered office is located, and to companies whose registered office is in Spain and whose securities are not traded on an official Spanish secondary market in the terms stipulated by regulation.

Law 6/2007 presumes that a natural or legal person, acting individually or in concert with others, has control of a company if he/she directly or indirectly holds 30% or more of voting rights, or if he/she holds a lower percentage and appoints, in the terms established by regulation, a number of directors which, together with any that may have already been appointed, represents more than 50% of the members of the company's board. In both cases, the Law requires an offer to be made for 100% of the shares<sup>9</sup>.

The CNMV may dispense with the obligation to make a bid when an equivalent procedure ensures protection of the legitimate interests of the holders of the shares affected by the suspension of trading and of all the convertible bonds and other securities carrying rights to subscribe to those shares.

Similarly, the CNMV shall, subject to certain conditions and in the terms established by regulation, dispense with the obligation to make a mandatory bid when another person or entity directly or indirectly holds a percentage of voting rights equal to or greater than that held by the party obliged to make the offer.

The mandatory bid will not be required when control has been acquired following a voluntary bid to all the holders of a company's securities for all their holdings that complies with all the requirements set out in the Law.

In the case of a bid prior to suspension of trading, the upper limit on the acquisition of treasury stock shall be 10% of the capital stock. If, as a result of the bid, the treasury stock exceeds this limit, it must be redeemed or sold within a year.

#### Voluntary bid

The Law envisages what is known as a voluntary bid, which is an offer to acquire shares or other securities directly or indirectly carrying voting rights in a quoted company, made volun-

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<sup>8</sup>. Under the Law, a price shall be deemed to be equitable when it is at least equal to the highest price paid for the same securities by the offeror, or by persons acting in concert with him/her, over a period of time prior to the offer to be determined by regulation and in such terms as may be established. However, the CNMV may change it in the circumstances and according to the criteria that may be established by regulation. These circumstances may include, among others, the following: the highest price was set by agreement between the purchaser and a seller; the market prices of the securities in question have been manipulated; market prices in general or certain market prices in particular have been affected by exceptional occurrences; or in order to enable a firm in difficulty to be rescued. The aforementioned criteria may include, among others, the following: the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis. <sup>9</sup>. Under the previous law it was only required to make a bid for all of the capital when it was sought to acquire 50% or more of the capital of the offeree company or when it was sought to acquire less than 50% but certain circumstances applied. Also, the new Law discontinues the provisions for the case of a bid for 10% of capital.

RD 432/2003 OF 11 APRIL 2003	LAW 6/2007 OF 12 APRIL 2007
<b>SITUATIONS REQUIRING MANDATORY BIDS</b>	
<b>BID FOR 10%</b>	<b>BID FOR 30%</b>
<p>— When it is sought to acquire a holding of 25% or more of the capital of the company.</p> <p>— When it is sought to increase, by at least 6% with a 12-month period, an existing holding that is equal to or more than 25% but less than 50%.</p> <p>— When it is sought to acquire a holding of less than 25% of the capital of the offeree company, and the following circumstances also apply:</p> <p>a) It is sought to acquire a holding of 5% or more of the capital of the offeree company or a smaller holding that enables a number of directors to be appointed which, together with any that may have already been appointed, represent more than one-third and less than one-half of the members of the board of the offeree company.</p> <p>b) It is intended to appoint the number of directors indicated in the previous paragraph or they are actually appointed within two years of the acquisition.</p>	<p>The threshold of 10% is derogated, but Law 6/2007 imposes a limit of 30% of voting rights or a lower holding that allows more than 50% of the members of the company's board of directors to be appointed (as mentioned below).</p>
<b>BID FOR 100%</b>	<b>BID FOR 100% (MANDATORY BID)</b>
<p>- When it is sought to acquire a holding of 50% or more of the capital of the offeree company.</p> <p>- When it is sought to acquire a holding of less than 50% of the capital of the offeree company, and the following circumstances also apply:</p> <p>a) It is sought to acquire a holding of 5% or more of the capital of the offeree company or a smaller holding that enables a number of directors to be appointed which, together with any that may have already been appointed, represent more than one-half of the members of the board of the offeree company.</p> <p>b) It is intended to appoint the number of directors indicated in the previous paragraph or they are actually appointed within two years of the acquisition.</p>	<p>When control of a quoted company is achieved. It is presumed that a company is controlled when:</p> <p>a) 30% or more of the voting rights are held directly or indirectly, or</p> <p>b) A smaller holding is achieved which, in the terms established by regulation, enables a number of directors to be appointed that, together with any that may have already been appointed, represents more than 50% of the members of the company's board of directors.</p>
<b>VOLUNTARY BID</b>	<b>VOLUNTARY BID</b>
Not envisaged	This is a bid made voluntarily, which must be made to all holders of securities, shall be subject to the same rules of procedure as the bids envisaged in this Law and can be made for less than the total number of securities.
<b>RIGHT OF SQUEEZE-OUT</b>	<b>RIGHT OF SQUEEZE-OUT</b>
Not envisaged	As a result of a bid for all the securities, the offeror holds at least 90% of the capital. In this case, the offeror can require all the holders of the remaining securities to sell him/her those securities at a fair price and, similarly, a holder of remaining securities can require the offeror to buy his/her securities from him/her at a fair price.
<b>SITUATIONS NOT REQUIRING MANDATORY BIDS</b>	
Acquisitions by deposit guarantee funds in banks, savings banks or credit co-operatives, the insurance corporation liquidation board (Comisión Liquidadora de Entidades Aseguradoras) or similar entities.	The CNMV may dispense with the obligation to make a bid when an equivalent procedure ensures protection of the legitimate interests of the holders of the shares affected by the exclusion and of all the convertible bonds and other securities carrying rights to subscribe to those shares.
Acquisitions made in accordance with the Compulsory Expropriation Law and any others resulting from the exercise by competent authorities of public law powers under current law.	The CNMV may also, subject to certain conditions and in the terms established by regulation, dispense with the obligation to make a mandatory bid when another person or entity directly or indirectly holds a percentage of voting rights equal to or greater than that held by the party obliged to make the offer.
When all the shareholders of the offeree company agree unanimously to sell or exchange all the shares representing the company's share capital or decide not to sell or exchange their shares in a takeover bid.	
Acquisitions in which the competition authority has deemed there exists a situation of joint control of the company by the acquirer pursuant to Law 16/1989 of 17 July 1989 on Competition and, in addition, certain conditions apply.	

tarily to all the holders of those securities and subject to the same rules of procedure as the bids envisaged in this Law. They may be made under the conditions established by regulation for a smaller number of shares than the total.

#### Right of squeeze-out

This new development in Spanish law refers to cases in which, following a bid for all of a company's securities, the bidder holds at least 90% of the capital and the bid has been accepted by the holders of securities representing at least 90% of voting rights. In this case the offeror can require the holders of the remaining securities to sell him/her those securities at a fair price and, similarly, a holder of remaining securities of the offeree company can require the offeror to buy his/her securities from him/her at a fair price.

#### Obligations of the offeree company's board and management

The offeree company's board and management shall obtain the prior authorisation of the general meeting of shareholders before taking any action, other than seeking alternative bids, which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company. This shall not apply if the bid is made by an entity whose registered office is not in Spain and that is not subject to these rules or other equivalent ones, including those relating to the required procedure for decision-making by the general meeting of shareholders.

The Law leaves each company free to decide whether it will or will not apply breakthrough measures, in respect of which the decision must be taken by the general meeting of shareholders. Further, the company may decide not to apply any breakthrough measures that may have been agreed upon should the offeror not be subject to equivalent measures.

The Law, which will come into force on 13 August 2007, establishes a transitional regime for certain takeover bids. Thus, for example, whoever has a percentage of voting rights in a quoted company that is 30% or more but less than 50% when this Law comes into force shall be required to make a bid should certain circumstances apply. Also required to make a bid is anyone who, prior to the entry into force of the Law, acquired a holding in a company and subsequently appointed a number of directors which, together with any that may have already been appointed, represents more than 50% of the members of the company's board.

#### CHANGES IN TRANSPARENCY REQUIREMENTS IN RELATION TO INFORMATION ABOUT QUOTED COMPANIES

The requirement to make public and disseminate significant information is adapted by this Law to the provisions of the Transparency Directive. In this respect, the Law sets out the obligations of securities issuers to make public and disseminate immediately to the market and to the CNMV all significant information as soon as the event becomes known. However, when this information may upset the normal course of transactions in securities of the issuer or compromise the protection of investors, the issuer shall communicate such information, before making it public, to the CNMV, which shall disseminate it immediately. Similarly, an issuer may, under its own responsibility, postpone the release to the public and dissemination of significant information when it considers that the information prejudices its legitimate interests, provided that such omission is not liable to confuse the public and that the issuer can guarantee the confidentiality of that information. The issuer shall inform the CNMV of all this immediately.

The Law confirms the CNMV's power to require the auditors of the issuer to provide it with any information needed to carry out its supervisory tasks and to require issuers to make public any additions or corrections to periodic information.

Also, the regime governing periodic information established in the Transparency Directive is set in place. The Law thus specifies the annual, half-yearly and quarterly reports that the issuer

must prepare, make public, disseminate and send to the CNMV for inclusion in the related official register, with certain exceptions.

Further, the requirements are changed for notifying the issuer and the CNMV of the acquisition or disposal of major holdings of shares carrying voting rights in the capital stock of the issuer, or of financial instruments carrying the right to acquire such shares. However, until the implementing provisions of the Law are enacted, the current regime governing notification of major holdings will remain in force.

Finally, obligations relating to treasury stock are established, whereby issuers must notify to the CNMV, make public and disseminate the transactions in their treasury stock, in the terms established by regulation, whenever the proportion reaches, exceeds or decreases by the specified percentages.

#### OTHER ASPECTS OF THE LAW

The set of public registers of the CNMV is reorganised and the regulated information register required by the Directive is clearly established as the central storage mechanism; infringements are categorised so as to enable application of the related sanctions for non-compliance with the requirements of this Law; and, finally, a summary is given of the new information that companies will have to publish in their management report, including most notably the major agreements entered into by the company in the event of change of control of the company due to a takeover bid, along with the effects of such agreements, except when making them public would seriously prejudice the company.

#### ***Reporting by insurance companies, pension fund management companies and insurance and reinsurance brokers***

Law 62/2003 of 30 December 2003<sup>10</sup> on fiscal, administrative and social measures permits the Ministry of Economy and Finance to determine the cases and conditions in which insurance companies, pension fund management companies, insurance brokers and insurance brokerage companies are to submit electronically to the Directorate General of Insurance and Pension Funds (DGSFP) the information required of them under their specific legislation.

Given that all these entities, pursuant to the regulations governing them, are required to provide certain information to the DGSFP, Order EHA/1805/2007 of 28 May 2007 (BOE of 20 June) was published obliging them all to send electronically statistical and accounting documentation to this directorate general. To do so, they will have to comply with the technical requirements for accessing and using the electronic registers established by Order EHA/3636/2005 of 11 November 2005 creating the electronic register of the Ministry of Economy and Finance.

Finally, the Order takes the opportunity to amend certain parts of the aforementioned Order EHA/3636/2005. First, it abolishes the electronic procedure relating to the application for appraisal of real estate by the GDSFP, doing away with the possibility of requesting appraisal of real estate by its technical service, and second, in relation to insurance intermediaries, it adopts a new electronic procedure for the submission of statistical and accounting documentation by insurance and reinsurance brokers.

2.7.2007

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<sup>10</sup>. See "Financial Regulation: 2003 Q4", Economic Bulletin, January 2004, Banco de España, pp. 87-91.