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CIRCULAR 2/2013 OF THE MAB (THE SPANISH ALTERNATIVE INVESTMENT MARKET) ON THE REGIME APPLICABLE TO SOCIMIS (SPANISH REITs)

As we reported in our [Updates Corporate-Tax 1/2012](#) publication summarizing the key contents of Law 16/2012, of December 27, 2012 (Tax Measures Law) setting out provisions on certain features of listed corporations for investment in the real estate market (SOCIMIS) aimed at boosting this sector, one of the most important new pieces of legislation was the option to elect to have the shares of SOCIMIS traded on a regulated market or on a Spanish multilateral trading system or one in another EU member state or in the European Economic Area.

In this connection, on March 5, 2013, the MAB published Circular 2/2013 establishing the regime applicable to SOCIMIS whose securities are listed on this market. The Circular will be applicable on the date this is announced by the MAB in an “operating instruction.”

Although it has been attempted for the requirements laid down for SOCIMIS to be very similar to those laid down for companies whose shares are traded in the “Enterprises in expansion” segment, a specific segment has been created for this type of companies, and Circular 2/2013 only sets out the elements that are uniquely applicable to SOCIMIS.

Summarized below are the requirements that SOCIMIS must meet to have their shares traded on the MAB, in light of Circular 2/2013 and of the other MAB circulars applicable to companies whose shares are traded in the “Enterprises in expansion” segment:

1. GENERAL REQUIREMENTS

- Both SOCIMIS, subject to the regime in Law 11/2009, of October 26, 2009 on SOCIMIS, and foreign corporations (or entities with an equivalent legal form) whose corporate purpose and investment regime are comparable to the regime provided in the Spanish legislation on SOCIMIS, can be listed on the market.
- Their minimum capital stock must be 5 million euros which must be fully paid.
- There cannot be any statutory or bylaw restriction on the free transferability of their shares.
- Their financial statements must be audited. If the company is formed in a member state of the European Economic Area, it will be able to elect to present its financial information under International Financial Reporting Standards (IFRS) or under national accounting standards. If the company is formed in a non-EU member state, its financial information must be presented under IFRS or US GAAP.

- Although their shares are registered, they must be represented by book entries.

2. COMPANY BYLAWS

Their bylaws must include, inter alia, the following provisions:

- Obligation for shareholders to notify the company of the acquisition or sale of shares where it causes their ownership interest to reach, go above, or fall below, 5% of the capital stock and successive multiples of 5%; the same obligation applies at a lower 1% to directors and senior managers.
- Obligations for shareholders to notify the issuing company of the signing, extension or termination of any agreements that restrict the transferability of shares or affect the right to vote.
- Obligation for the issuing company, if it resolves to stop trading on the MAB without the unanimous vote of the shareholders, to offer to the shareholders who did not vote in favor, to acquire their shares at a justified price in accordance with the criteria set out in the legislation on tender offers.
- Obligation for any shareholder who receives a purchase offer from another shareholder or from a third party, which implies that the transferee is going to own a controlling interest (above 50%), not to be able to transfer their interest unless the potential transferee makes an offer to all the shareholders to buy their shares on the same terms.

3. INFORMATIVE MEMORANDUM

The inclusion of the shares on the MAB requires either the approval of a Prospectus by the CNMV, if a public offering is performed or of an Informative Memorandum approved by the MAB if they are included via a share offering that does not meet the requirements for a public offering or where an application for admission to trading of the shares is made because it has the sufficient spread of ownership.

The outline of the Informative Memorandum for inclusion on the market that must be submitted for approval by the MAB by the SOCIMI is basically the same as for enterprises in expansion, with the addition of some specific sections, such as for example, a description of the real estate assets, cost of bringing them into operation following a change of tenant, description of the investment and asset-replacement policies, etc.

4. REGISTERED ADVISOR AND LIQUIDITY PROVIDER

Any SOCIMI that applies for its shares to be admitted for trading on the MAB must have the assistance of a registered advisor and execute (either the company itself or any of its reference shareholders) with a financial intermediary a liquidity contract, whose purpose will be to achieve sufficient trading frequency, reduce price fluctuations not caused by the market trend and, in short, to facilitate the liquidity of transactions.

5. FREE FLOAT

For the SOCIMI to be listed on the MAB it will be necessary for shareholders holding a percentage below 5% of its capital stock, own a number of shares which, at least, relates to either of the following aggregates:

- an estimated market value of two million euros.
- 25% of the outstanding shares.

Note that the shares made available to the liquidity provider will be included in the above calculation.

No lower limit has been placed on the number of shareholders. Nevertheless, the market itself, based on the issuer's characteristics, will assess the suitability in each specific case.

6. VALUATION

The SOCIMI must produce a valuation performed by an independent expert, unless in the six months before the application to be listed on the market a placement of shares was carried out or another financial transaction that is relevant for determining the first reference price for the shares when they start to be traded.

7. CONTINUOUS DISCLOSURE TO THE MARKET AND WEBSITE

The information that the SOCIMI must provide to the market on an ongoing basis once its shares are traded on the MAB is divided into; (i) periodical financial information (half yearly and yearly); (ii) material information (calling of shareholders' meetings, changes in the managing body, corporate transactions, bylaw amendments, etc.); (iii) half-yearly disclosure of the number of shareholders and list of shareholders with ownership interests equal to or higher than 5%; (iv) side agreements. Besides being disclosed to the market, the information must be posted on the website which the company will have to have available.

8. LOCK-UP UNDERTAKING

The reference shareholders and the key managers must undertake not to sell the SOCIMI's shares or carry out transactions equivalent to sales of shares, within a year following the formation of the company, to the market, with the exception of any shares that may be made available to the liquidity provider.

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