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Access by non-listed Spanish companies to the bond market

Traditionally, non-listed Spanish companies have not had access to the bond market as a consequence, amongst other reasons, of the limitation imposed by article 405 of the Spanish Companies Law (*Ley de sociedades de capital*). Royal Decree-law 4/2013 removes, in certain scenarios, such limitations **facilitating the financing of non-listed Spanish companies through the issuance of bonds.**

Key Issues

- Non-listed Spanish companies would have easier access to the capital markets.
- The reform addresses the search of alternatives to bank debt funding.
- Retail investors maintain the existing level of protection
- New horizon in structuring transactions.

Difficulties in accessing the bond market

The reasons that have traditionally impeded attempts by non-listed Spanish companies to gain access to the capital markets are varied in nature, from purely economic reasons (bank debt offering competitive pricings, broad range of credit entities with enough liquidity to cover the financing needs, etc.) to legal impediments. In this regard, article 405 of the Spanish Companies Law (*Ley de Sociedades de Capital*) has represented an barrier to entry to the capital markets.

This article imposes a quantitative limit on the maximum amount of any bond issuance to the extent that "*the total amount of all issuances will not exceed the company's paid-up share capital and reserves appearing on the last approved balance sheet and or any accounts regularizing or updating the balance sheet (…)*". Whilst there are certain exemptions to such rule (for example, credit entities, listed companies or motorway concessionaires), the vast majority of the Spanish companies could not benefit from those exceptions and, therefore, faced a limitation when choosing their financing sources.

Removing barriers: limiting the scope of application of article 405

Considering the need to facilitate access by non-listed Spanish companies to the capital markets and reduce the dependency on bank debt, on 22nd February 2013, the Spanish government passed Royal Decree-law 4/2013, on measures to support entrepreneurs and stimulate growth and the creation of employment, **removing the application of article 405 of the Spanish Companies Law in the following scenarios:**

1. Issuances targeted at **institutional investors**.
2. Issuances targeted at **investors acquiring securities worth at least 100,000 euros per investor**, for each separate offering.
3. Issuances of securities whose **face value per unit is at least 100,000 euros**.

Accordingly, the amendment approved by the Spanish Government implies, on the one hand, removing the legal barrier which prevented access to the capital markets through the issuance of bonds and, on the other, protecting retail investors (to the extent that the offers of securities could only be addressed to institutional investors or, if the retail investors do have access to the offer, there is quantitative selection by requiring a minimum face value of 100,000 euro).

Issues to be considered

Notwithstanding above, it is worth mentioning that the journey set out by this reform should be completed by the creation of markets specialized in trading company debt acting as alternatives to regulated markets and the approval of the relevant tax measures assisting the creation of and entry to those bond markets.

Additionally, this reform may make it possible to implement complex financing structures (project bonds, etc.) or permit a peaceful coexistence of bank financing and bonds.

Summary

In summary, the reform brought in by Royal Decree-law 4/2013 represents a significant step that paves the way for the opening of the capital markets for non-listed Spanish companies and, in general, a financing model which is less dependent on bank financing.

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