

## New Audits Act

### Overview

Law 22/2015 on statutory audits came into general effect on 17 June 2016.

The law represents a complete overhaul of the regulations that apply to audits, particularly rules of procedure, liability and prohibitions for auditors. It amends other statutes, in particular, the Spanish Companies Act (*Ley de Sociedades de Capital*, LSC), the Spanish Code of Commerce and the Spanish Corporation Tax Act.

Greater obligations are introduced relating to audits of Public Interest Entities (PIEs). Following the approval of Royal Decree 877/2015, which amended Article 15 of the Audit Regulation, PIEs are understood as (i) companies issuing securities admitted to trading on Spanish regulated markets and on Spain's alternative investment market, the MAB, belonging to the segment of growth businesses, (ii) credit institutions; (iii) insurance firms; (iv) bank foundations; (v) payment institutions; (vi) electronic money institutions; (vii) investment firms and collective investment schemes, and pension funds, that for two consecutive years have more than 5,000 investors or shareholders, and 10,000 members, respectively, and their management companies; (viii) institutions with a turnover of more than €2 billion or with an average headcount of more than 4,000 employees, for two consecutive years; and (ix) groups of companies in which the parent company is one of the above institutions.

As points to note:

- In relation with Public Interest Entities (PIEs), the law introduces major changes with respect to the provision of non-audit services and requires auditors of PIEs to rotate every ten years. [Read more...](#)
- Rules on the functioning of audit committees of PIEs are also included, introducing changes, for example, with respect to their composition. These committees must be formed by a majority of independent directors (art. 529.14 LSC).
- In the case of PIEs, there is now the possibility that directors, shareholders representing 5% of the capital or the audit committee or the Spanish

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Accounting and Audit Institute (ICAC) can seek to remove the auditor when there is good cause.

- The content of the auditor's report is extended. In the case of PIEs, auditors must prepare an additional report explaining issues related with the audit process and results.
- The ICAC has extended powers to assess the existence of systemic risks and of concentration, analyse representations by auditors and to send information to and cooperate with European supervisory authorities.
- Any contractual clause that limits the appointment of statutory auditors to certain categories or lists of auditors are invalid (the new art. 264.4 LSC).
- Where auditors are appointed by commercial registrars, registrars are authorised to set the audit fees or basis for calculating those fees. Fees must be agreed before auditors accept the engagement and auditors can request an advance payment or bond before starting their work (art. 267 LSC). The obligation is also established for auditors to evaluate first whether they are in a position to accept the appointment (art. 265 LSC).
- In cases where annual accounts are reissued after the auditor's report, auditors must issue a new report on the reissued accounts (art. 270 LSC).
- If a company has voluntarily appointed its auditor, and that appointment is registered at the commercial registry, the auditor's report must be submitted in order to file the annual accounts (art. 279.1 LSC).
- The term "auditor" is replaced with "independent expert" to determine the fair value of shares in the following cases: voluntary transfers between individuals (art. 107 LSC), transmission by reason of death (art. 124 LSC), liquidation of usufruct rights (art. 128 LSC), disapplication of pre-emption rights in issues of new shares by listed or unlisted companies (arts. 308 and 505 LSC), the withdrawal and expulsion of members (art. 353 LSC), disapplication of pre-emption rights in issues of convertible bonds (art. 417 LSC).
- Article 273.4 of the LSC is removed. This established the obligation to set aside a portion of profits for the year in a restricted reserve for goodwill (for a minimum of 5% of the value of the goodwill). In the years starting on or after 1 January 2016, the reserve for goodwill will be reclassified to the company's voluntary reserves and will be available from that date in the amount that exceeds the goodwill recognised on its balance sheet. Furthermore, art. 12.2 and the 35<sup>th</sup> transitional provision of the Spanish Corporation Tax Act are amended, and art. 13.3 repealed. This is to adapt these provisions to the new criteria for the amortisation of goodwill and intangible assets with indefinite useful lives, which will be deductible up to the maximum annual limit of 1/20 of their value with effect for tax periods starting on or after 1 January 2016.
- The exception is modified to the dispensation from the obligation to consolidate due to size, which now refers to whether any of the companies

in the group is considered a PIE (before, it referred to listed companies in the EU). New cases of dispensation are also introduced when no subsidiaries are of material interest for the fair presentation of the group or when exceptional circumstances prevent consolidation (justified impossibility of obtaining information, severe and lasting restrictions on exercising control or mere holding for a subsequent transfer) (art. 43 Spanish Code of Commerce).

Certain provisions of the new audit act, in particular those relating to amendments of the Spanish Companies Act (except for provisions in relation with the composition of the audit committee, which took effect on 17 June 2016), Code of Commerce and Corporation Tax Act, came into force on 1 January 2016 and apply in relation with the years starting on or after that date.

## Contacts

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