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THE NEW SPANISH VENTURE CAPITAL ENTITIES REGULATION

By Francisco Aldavero, Partner
Araoz & Rueda

Spanish venture capital entities are now governed by Law 25/2005, of 24 November 2005, which sets out the regulatory framework applicable for Venture Capital Entities (VCE) whether they are incorporated as a Venture Capital Corporation (VCC) or as a Venture Capital Fund (VCF), as well as for their Management Companies. It came into force in December 2005.

The new VCE regulation seeks to provide these entities with a more flexible and modern legal framework. Therefore, the reform basically pretends (i) the speed up of VCE's administrative regime, (ii) provide more flexibility in investment rules and (iii) introduce a financial regime more in keeping with that found in the venture capital sector of the most advanced countries.

To speed up the administrative regime of VCE

- National Commission for the Securities Market (*"Comisión Nacional del Mercado de Valores", C*NMV) has been assigned full jurisdiction for the authorisation files. The former regime required the intervention of both the Ministry of Economy and that of the CNMV.

- The term in which the resolution of authorization must be notified has been reduced. Under the new regime, the term to notify such resolution is two months (contrary to the term of three months in accordance to former Law 1/1999), with a regime of negative silence for cases of failure to notify.

- The modification of By-laws and management regulations will be resolved in a two-month term with a regime of positive silence.

- The creation of a simplified regime for a VCE which shares and participations are offered on a strictly private basis and whose investors, limited to a maximum of twenty, individually undertake to disburse at least euros 500,000 or qualify as institutional investors or as employees, managers or directors of the VCE or its Management Company.

Flexibility and introduction of new Venture Capital Entities

- VCEs are allowed to acquire participation in non-financial companies which are listed on the Stock Exchange, provided that such companies are delisted within the following twelve months of the acquisition of such stake. In 2005, important transactions of this kind were led in Spain by foreign investors.

- Funds and Corporations of VCE are created. These entities must invest at least 50% of their assets in other VCE, either Spanish or domiciled in a member state of the OECD, provided that these entities do not invest more than 10% of their assets in other VCE. Thus, a new figure ("*Found of Founds*"), which shall encourage access of private and institutional investors, has been created.

Tax treatment

- The exemption of the 99% for income obtained from the transmission of shares related to the venture capital activity.

- Full tax deduction, depending on the source of the income for dividends and, in general, in the profit sharing form a VCC.

Some others modifications have also been enacted by this Law, but they are all of a similar nature.

We hope that the new Law shall achieve its principal aim providing Spanish VCEs with a more flexible and modern legal framework and promoting their development based on the essential role they are playing in the provision of funding for companies engaged in R&D&I activities. It will also be interesting to observe how the sector develops in an environment where interest rates are clearly rising.

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