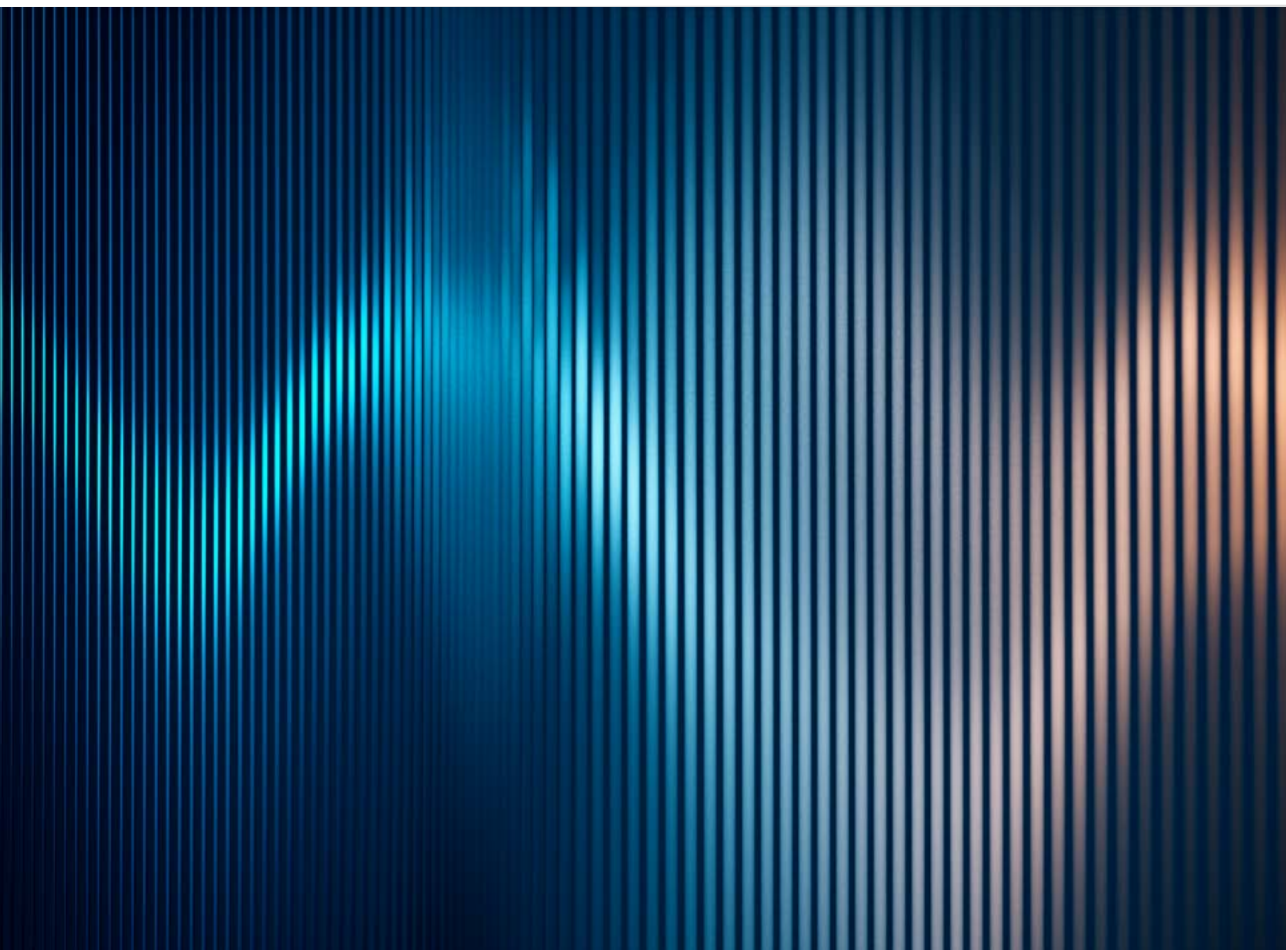
LEGAL TRENDS IN FINANCING IN SPAIN

July 2025

CUATRECASAS



LEGAL TRENDS IN FINANCING IN SPAIN

July 2025

CUATRECASAS

INTRODUCTION

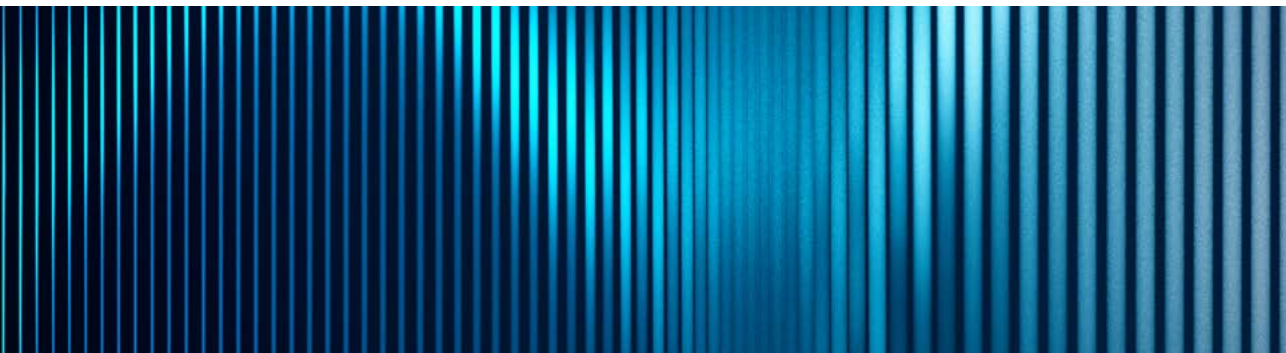
The structuring and negotiation of financial transactions require a high degree of specialization, as well as the best practices and tools to anticipate risks, design effective strategies and, ultimately, achieve the objectives of each transaction.

In this guide, we bring together the perspectives, know-how, and accumulated knowledge of our team of specialists in the legal matters and issues arising from recent transactions of significance, either because they reflect emerging trends or have brought about situations involving greater complexity in practice.

Based on concrete cases and first-hand experience, this guide provides a comprehensive and up-to-date overview of our practice in Spain.

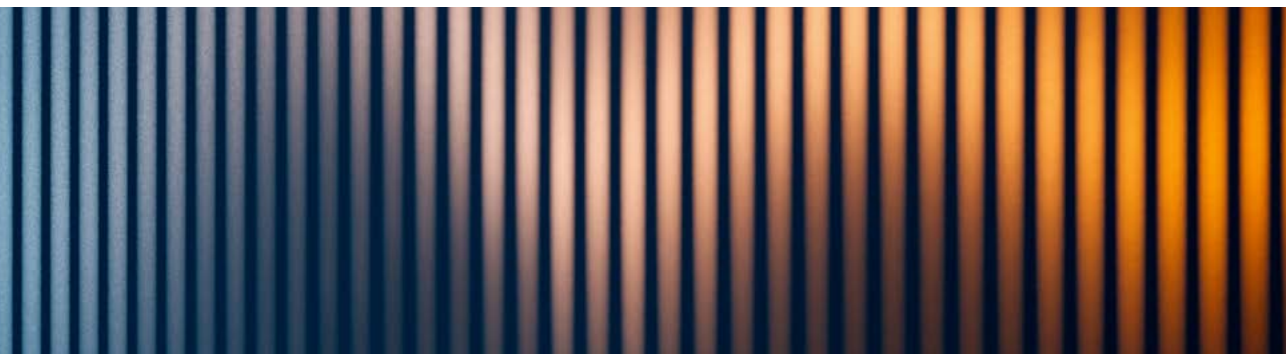
We also analyze the evolution of the Spanish market, highlighting the most noteworthy regulatory developments and the practical solutions we have implemented to address our clients' needs, thus demonstrating our ability to adapt to a dynamic and constantly evolving financial environment.

For ease of reference, this guide is organized into the most relevant sub-practices of commercial and financial law, following the evolution of legal practice toward greater specialization and diversification among market participants.

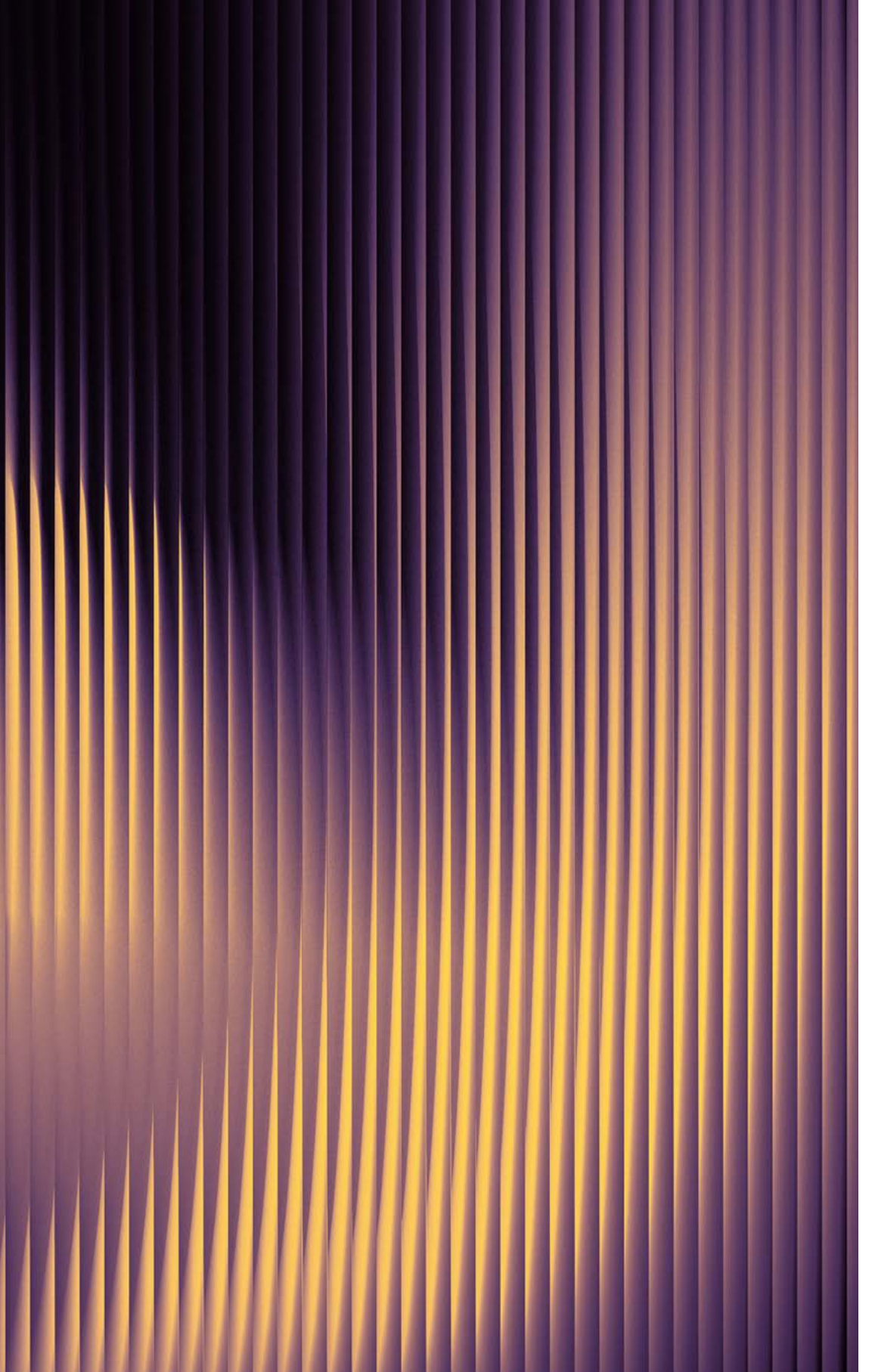


Accordingly, it focuses on corporate finance, real estate and project finance, loan assignment transactions, issuance of debt instruments, securitization transactions and derivatives. Moreover, certain cross-cutting aspects, such as the growing importance of sustainability criteria in the financial sector, are addressed within the framework of various sub-practices, offering different perspectives according to their impact on each one.

In line with Cuatrecasas' strong commitment to excellence, we hope you find this document practical and useful. We place the technical expertise of our team of financial law specialists at your service and hope to have the opportunity to collaborate closely in developing and executing your transactions in Spain.



INDEX



I.

CORPORATE FINANCE

Security interests in the context of multijurisdictional financings

The Spanish security system offers multiple forms of security interest that can accommodate sophisticated and novel financing structures. Below we describe some technical aspects that should be taken into consideration.

- **Principle of specialty**

  The Spanish security system is characterized by its marked principle of specialty, which results in security interests being created over specific individual assets to secure the obligations of a debt instrument, or several instruments that may be treated as a single unit when they serve a common purpose (e.g., the different loan and credit tranches under a financing agreement).

  The wide range of forms and types of security often allows a given asset to be secured by several of them. The optimal solution to structure a robust security package is to carry out a case-by-case analysis of multiple factors, such as cost, the level of protection against third parties, the possible existence of ranking among the secured obligations, the required formalities, the timeframes for their creation, and the measures needed to ensure the proper protection of the security, among others.

  As a rule, floating charge structures found in other jurisdictions are not approved under Spanish law. A security package must be implemented, depending on the type or types of security required by each asset. There is, however, a type of mortgage—referred to as a "floating" or "global" mortgage (as set out in article 153 bis of the Spanish Mortgage Act)—that, as an exception to the above principle of specialty, allows the obligations of multiple financial instruments that are not necessarily functionally related to be secured under the umbrella of a single security. This mortgage can also be topped up during its term, subject to certain requirements and conditions.

To accommodate a variety of secured financial instruments, security structures can be implemented based on the division of assets of the same nature (into units, where possible, such as with shares, or into percentages, in the case of rights), whereby each portion of the asset is allocated to secure an obligation (or several obligations that may be treated as a single unit).

- **Successive-rank and equal-rank security**

  It is also common to implement security structures with different rankings and of equal rank, which makes it possible to establish debt structures involving heterogeneous rankings, natures, or types of instruments or creditor classes. Spanish mortgage law provides for the establishment of (chattel and real estate) mortgages with second and lower orders of priority, and equal-rank mortgages (those having the same priority). With respect to pledges, the treatment will differ depending on whether it is an ordinary or possessory pledge (*prenda ordinaria o posesoria*), or a non-possessory pledge (*prenda sin desplazamiento de la posesión*), since the existence of different or equal ranks is not regulated under Spanish general civil law, and their validity and effectiveness are implicitly subject to the acceptance of the application of mortgage principles to pledges by analogy. If the asset type so allows, a non-possessory pledge may be used, although its formalization is more complex, as it must be registered and is subject to certain requirements regarding the identification of the pledged asset and its updating.

  Moreover, depending on the applicable territorial scope, it is also possible to create a pledge under the civil law of Catalonia, which regulates this type of security in detail and allows for multiple pledges over the same asset. This may be an ideal solution in certain cases, given its simple and low-cost implementation.

- **Ancillary nature of the security**

  Spanish security law is also strongly causality-based. Thus, all forms of security in rem and personal guarantees granted as a *fianza* are ancillary with respect to the main obligation they secure. Only first-demand guarantees are recognized as having an abstract or autonomous character, and, although they are not specifically regulated, they have been accepted and interpreted by Spanish courts and play a key role in structured finance.

  As a result of this ancillary nature, changing essential aspects of the secured obligation often requires the renewal or, if applicable, the ratification of the security or guarantee. A renewal terminating the secured obligation would also terminate the security or guarantee. This means that, in multijurisdictional transactions, the application of the legal systems involved must be carefully coordinated.

  On the other hand, the legal concept of "trust" does not exist under the Spanish legal system. This fact, combined with the above ancillary nature of security interests, prevents the recognition in our jurisdiction of the "parallel debt" mechanism (i.e., structures in which a secured obligation parallel to the original one is created and a security trustee is appointed as the holder

of the secured obligations). Granting security solely in favor of the security trustee may also entail risks, particularly in an insolvency scenario, as Spanish courts may not recognize the security or the special privilege that it could grant with respect to creditors other than the security trustee. Moreover, intercreditor agreements that provide for the security trustee to distribute proceeds from the enforcement of the security are subject to insolvency regulations, which will prevail over third parties. Therefore, multijurisdictional financings that contemplate these mechanisms and structures require careful structuring and risk analysis, especially where there are difficulties in establishing security directly in favor of all secured creditors. In some cases, it is advisable to structure the transaction through a fund that holds the security interests.

- **Governing law issues**

  In the context of multijurisdictional financings, issues frequently arise regarding the governing law applicable to the different security interests that comprise the security package. It thus becomes necessary to apply the rules of private international law on a case-by-case basis, especially when the asset in question is intangible (such as rights), has connections to multiple jurisdictions, or is likely to move between jurisdictions. The existence of different civil law systems within Spain, such as that of Catalonia, adds a layer of complexity while simultaneously providing flexibility in many cases to identify optimal security solutions. For instance, Catalan law regulates pledges over entire groups of assets (*universalidades*), pledges over securities, and the substitution of the pledged assets. In this way, it can offer a secure legal framework of clear interest for certain types of corporate finance transactions, such as those backed by collections of valuable artistic or historical objects, or by securities, as in the case of margin loans.

Leveraged buyouts

Share deals in Spain are typically subject to the prohibition on financial assistance set out in articles 143.2 and 150.1 of the Spanish Companies Act, which applies to both public limited companies (with respect to the acquisition of their own shares and the shares of their parent company) and private limited companies (with respect to the acquisition of their own shares or shares in any company within their same group). This prohibition is characterized by its broad and indeterminate regulation and by the virtual absence of whitewash mechanisms comparable to those available in other neighboring jurisdictions.

There is still little case law on this matter. However, in recent years, the courts have issued several interesting rulings that, although not yet constituting settled case law, have addressed some of the issues of interpretation raised by the regulation.

In any case, compliance with the regulation in this area is a key component of corporate finance transactions and usually determines the structure of the acquisition itself, its financing, and the security package. In this regard, since compliance with the regulation is a matter of interest to both parties (borrower and lender), there is a clear alignment in the need to find solutions that enable overcoming the rigidities of our financial assistance regulations. The main solutions include:

- **Tranching:** Since the prohibition on financial assistance only applies to indebtedness aimed at financing an acquisition, security interests on the assets of the target or its group will continue to be granted for tranches of debt serving a different purpose. For instance, it is common in Spain for financing provided to the acquiring SPV to also include, among its purposes, the refinancing of existing debt in the target or its group (to optimize funding sources, align them with market conditions, and prevent early maturity or breaches in financing agreements containing change of control clauses), the financing of capex, or the financing of working capital of the acquired group. In this context, it does not matter whether debt serving a purpose other than acquisition is provided to the acquiring SPV or to the target and, if applicable, to its subsidiaries. Thus, all debt serving a purpose other than acquisition will benefit from security or personal guarantees provided by the target (or its subsidiaries) on its assets, while debt aimed at financing the acquisition will exclusively benefit from security interests provided by the acquiring SPV on its assets (in most cases, the shares of the target, the credit rights of the SPV under the SPA, or the credit rights arising from its bank accounts).

  In addition to segmenting the financing into tranches, it is important to ensure that all commitments (and not only security and personal guarantees) assumed by the borrowers and guarantors in the transaction do not contravene the prohibition on financial assistance.

- **"Debt push down" structures:** These structures combine the downstreaming of funds through loans to the target or to entities within its group, the upstreaming of funds through dividend distributions, and, occasionally, the implementation of a merger (normally a downstream merger) between the acquirer and the target. To design structures that fully comply at all times with the prohibition on financial assistance, numerous aspects of Spanish corporate law, as well as tax and accounting matters, must be carefully analyzed and considered in relation to each case.

- **Forward merger:** By merging the acquiring company and the target company, and applying the principle of universal succession with respect to the debts of the merging companies and those of the post-merger company, it is possible to transfer the original acquisition debt onto the balance sheet of the company that owns the assets (the target), with the surviving company in the merger normally being the target itself (downstream merger). The merger of companies that have incurred debt to acquire control of other companies participating in the merger requires compliance with Spanish corporate law applicable to forward mergers.

These requirements include describing in the merger plan the resources and timeframes for the repayment of the acquisition debt, the preparation of a report by the directors stating the reasons justifying the acquisition and merger—which must also include an economic and financial plan—as well as the issuance of a report by an independent expert providing an assessment of the reasonableness of the points set out in the merger plan and in the directors' report. As a result of the 2023 amendment to the forward merger regime, it is no longer a requirement for the independent expert to issue an opinion as to whether financial assistance exists, since this is essentially a legal matter and had caused problems in practice.

Security in asset-based financings

Asset-based financing allows companies to access financial resources by using their tangible assets as security.

In our jurisdiction, asset-based financings of this type commonly involve security over movable assets, such as chattel mortgages (for industrial equipment, vessels or aircraft, and industrial or intellectual property) and non-possessory pledges (for certain types of machinery, inventory, or receivables).

The granting of these security interests requires determining the leverage capacity based on the asset's liquidity in the market. The asset's value serves as the basis for the financing and will be critical to the success of the transaction. Therefore, when structuring security interests for this type of financing, it is essential to establish clear and recurring asset valuation criteria to determine the collateral's value (LTV).

Certain assets that are subject to trade, rotation, or a change in nature (such as goods, inventories, equipment, and accounts receivable, among others) usually require the establishment of updating and monitoring mechanisms to properly protect the value of the collateral. This adds a layer of complexity and cost that must be taken into account and is often the cornerstone of negotiations for these types of transactions. The protection of this collateral is usually reinforced by granting irrevocable powers of attorney to the secured creditors (or their security trustee).

On the other hand, Spain is a pioneer in the international protection of security interests over fleets and railway equipment, being one of the few countries to have signed the Luxembourg Protocol on railway rolling stock, which entered into force in 2024 in the context of the international interests established under the Cape Town Convention. This represents a competitive advantage and a fundamental support for the development of the railway sector in Spain. From a technical point of view, the registration of the security interest in the relevant

international registry can only be carried out once each element of the fleet has been identified by its registration number, which often conditions the financing structure for this type of asset.

The financing of aircraft (frequently involving fleets of helicopters) registered in Spain is common in our market and benefits from a secure legal framework. Generally, these transactions are secured by both a national security (chattel mortgage) and an international security, under the aircraft protocol of the Cape Town Convention, regarding which Spain has extensive experience. It is also common for this security to collateralize the investment through structured financing under tax lease regimes.

LMA agreements in Spain

The agreements and standards of the Loan Market Association (LMA) are widely used in the corporate finance market in Spain. These agreements provide a standardized framework for loan documentation that facilitates the negotiation and execution of financial transactions. However, there are several aspects and specific features that must be taken into account when applying these agreements under Spanish law.

In the process of reviewing and adapting standard LMA financing agreements to Spanish legislation, a series of specific clauses must be incorporated to ensure their compliance with Spanish law. These clauses address key aspects such as taxation, insolvency, enforcement, and the legal formalities required in Spain.

The adaptations range from references to the applicable Spanish regulations and the inclusion of specific definitions such as "Spanish Accounting Principles," "Spanish Public Document," "Qualified Spanish Lender," "Change of Law," "Control," "Sanctions and AML Regulations," "Financial Assistance," and "Borrower Jurisdiction," to the adjustment of other clauses such as "Tax Gross-Up" and "Tax Indemnity", those relating to taxes and potential tax deductions, and first demand guarantees from a Spanish obligor.

This review must also address matters specific to our legal system, such as requiring Spanish borrowers to deliver notarial acknowledgments of debt, which must be formalized as a Spanish public document; reference to article 317 of the Spanish Commercial Code regarding default interest; limiting each lender's liability with respect to compliance with the formalities required under Spanish law; and providing for the execution of the financing agreement as a public document before a Spanish notary, thereby ensuring the availability of an enforceable instrument (*título ejecutivo*).

It is therefore necessary to adapt these standards to each case, with guidance from specialist professionals experienced in multijurisdictional transactions.

Technical challenges of using credit rights as collateral

The use of credit rights as collateral deserves special mention due to their great relevance. In Spain, they are a common collateral and, in some cases, serve as the sole collateral in all types of financing transactions.

Spanish law provides minimal regulation regarding the creation of security over credit rights. For this reason, its regime must be complemented by the rules on the assignment of credit rights and by Spanish case law, which is extensive in this area. Proper structuring of the security involves technical complexity and requires taking into account both civil and insolvency law considerations relevant to each case. As an advantage, the system offers flexibility and allows for the use of several types and forms of security.

Below, we outline some of the aspects that must be analyzed when structuring the security over this type of asset.

The application of the financial collateral regime established in Spain under Royal Decree-Law 5/2005—which transposes Directive 2002/47/EC on financial collateral arrangements—offers significant advantages due to the ease of enforcing the collateral (typically an ordinary pledge) and its special protection in insolvency scenarios. Specifically, the declaration of insolvency by the collateral provider would not affect the collateral, which could thus be enforced separately according to the agreement itself and the law. However, the pledge may still be subject to clawback actions in certain situations. This unique regime requires that the creditor of the credit right be a credit institution and, as such, is not a mechanism available in all cases. It is commonly used with pledges over credit rights arising from bank accounts and deposits, as well as financial derivatives. The inclusion of certain types of financial institutions within the subjective scope of the regulation must be reviewed on a case-by-case basis.

On the other hand, in the context of security over bank accounts and deposits, the application of the above financial collateral regime requires careful treatment to accommodate the requirement that the secured creditor have "control" over the deposited funds, as interpreted by the Court of Justice of the European Union, and to do so in a manner compatible with the financing cash flows and the operation of the account or deposit. This aspect demands special attention, as it is a requirement foreign to Spanish security law and there is not yet a body of established case law on the matter. As a result, in practice, there are several ways accepted in the market to evidence this "control."

In distress scenarios or when obstacles arise that prevent the creditor from benefiting from the financial pledge, and there are identified credit rights that should reduce the outstanding debt, a *pro solvendo* assignment may be considered as an alternative to pledging contractual credit rights or monetary balances arising from a current account.

In a *pro solvendo* assignment (assignment for payment without extinctive effects), the debtor is released at the time of the payment of the transferred credit rights, but the original obligation is not fully extinguished, unlike in a *pro soluto* assignment (assignment in full satisfaction of the credit, or full accord and satisfaction). Therefore, it is functionally similar to a pledge.

Although its use is still residual, *pro solvendo* assignment is gaining interest as an alternative to the pledge, particularly due to its notable advantages in insolvency scenarios. Since it does not technically constitute a security, it is not subject to the standby regime applicable to enforcement actions in insolvency proceedings. Moreover, as a true assignment of credit rights, it would result in the removal of the credit rights from the assets of the debtor's (assignor's) insolvency estate. In any case, its application requires that the assigned credit right must already exist. In the case of future credit rights, they must be identifiable.

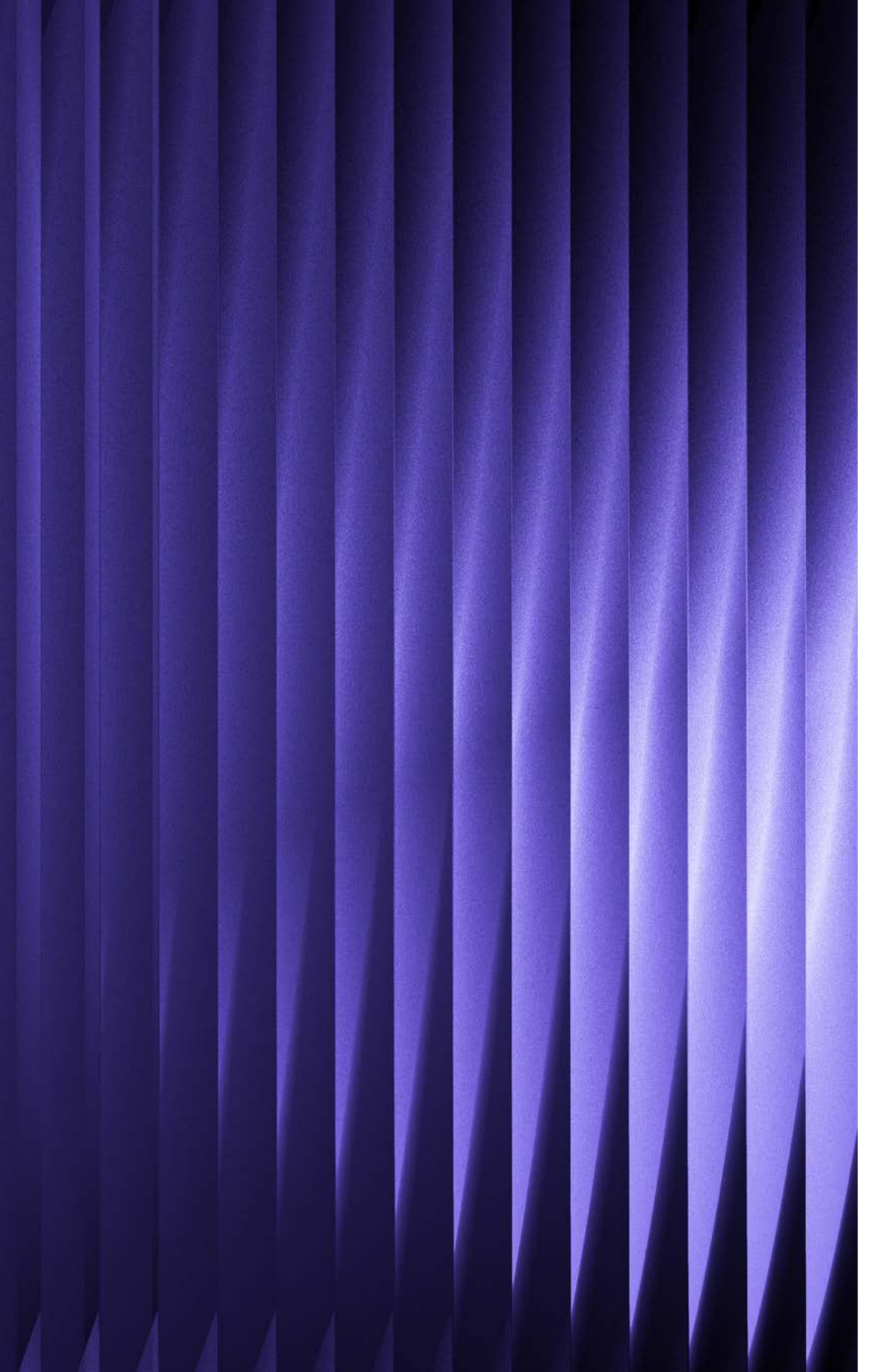
Notification to the debtor of the credit right serving as collateral is another significant technical aspect in these transactions, which is often addressed from various perspectives. The validity and enforceability of the pledge (when not notified) in the insolvency proceedings is undoubtedly one of the issues arousing the most interest and debate at present, particularly when the collateral consists of future credit rights. In these cases, the validity and enforceability of the pledge in the insolvency proceedings will largely depend on whether the credit rights arise from contracts that were perfected, or from legal relationships that were established before the declaration of insolvency.

The lack of established case law regarding the effects of notification of the pledge in insolvency proceedings has fueled and perpetuated certain debates, which are reflected in the structuring of the security and the negotiation of transactions. In this regard, there is a degree of consensus that notification is not a perfection requirement for an ordinary pledge under Spanish general civil law (unlike the pledge governed by Catalan civil law). However, if notification is not given, uncertainties arise in restructuring or insolvency scenarios. Thus, it could be considered that, for insolvency purposes, the creditor is not secured with respect to the pledge until notification has been effected and, as a result, the clawback period for the pledged assets would begin on the date of that notification.

In practice, to address these risks, notice to the debtor is usually given at the time the security is established, if it is feasible and does not entail excessive costs or other significant difficulties. Moreover, this brings important advantages; in particular, it prevents the debtor from making a discharge payment to the apparent creditor and precludes the pledgor's actions disposing of the credit right—carried out with the debtor—from being enforceable against the pledgee.

Although ordinary (possessory) pledges are more flexible and immediate in terms of their creation and maintenance, the difficulties in satisfying the notification requirement have led to the consideration of the non-possessory pledge as an alternative option. In the latter, public registration eliminates the need to notify the debtor. Furthermore, its validity and enforceability in insolvency proceedings expressly includes future credit rights, provided these are properly identified in the pledge.

Another challenging and debated issue in structuring these transactions is the existence of clauses within the underlying agreements that restrict or prohibit the transferability of their credit rights (known as non cedendo clauses). The current case law does not allow for a reliable prediction of the effects of these clauses on the pledge, nor, in particular, whether a pledgee who—despite exercising due diligence—was unaware of such a clause would be protected. This situation makes it advisable to exercise extreme diligence when analyzing the legal relationships that give rise to the credit rights being pledged.



II.

REAL ESTATE FINANCE

Market trends

Real estate investment continues to show strong growth, positioning the Spanish market very favorably for all types of assets. As a result of rising interest rates in recent years, certain asset acquisition or development transactions were structured with a greater emphasis on equity rather than debt instruments. The recent interest rate adjustments and the decrease in the Euribor have not only led to a reduction in project finance costs and the emergence of new projects, but have also allowed for the potential refinancing of some transactions—originally financed with equity—through bank debt.

Currently, the range of financing providers is very broad, with a legal and regulatory framework that is favorable to attracting both national and international investors, as well as alternative financing sources (such as debt platforms, crowdlending, and private debt funds). In this regard, it should be noted that lending money is not, in itself, a regulated activity in Spain and, currently, no banking license is required to engage in lending activities.

We have also observed interest from international investors seeking to enter the Spanish market, with many preferring to do so in partnership with local developers and real estate companies. In recent years, we have witnessed numerous alliances and joint ventures between local and foreign players aimed at facilitating the access of new international investors to the Spanish market. These investors act as financial partners to promote projects that they themselves will develop, leveraging their land portfolio, their knowledge of the local market, and their difficulties in obtaining reasonably priced financing.

Currently, all types of real estate assets are generally performing well and attracting interest. That said, in recent years, the Spanish real estate market has experienced significant changes in investor preferences, with a clear trend toward assets that offer long-term stability and

profitability. There is clear specialization in terms of asset class among investors, operators, and managers, and build-up procedures aimed at subsequent portfolio sales are becoming increasingly common. The types of real estate assets attracting the greatest interest include residential (especially affordable housing, luxury housing, flex living, and coliving), student housing and senior housing, hotels, offices (with a preference for flexible spaces and coworkings), data centers, retail (mainly in prime locations), shopping centers (with a particular focus on entertainment, sports, and cuisine), and logistics centers (with good transport connections and access).

In particular, affordable housing has been the main focus of both policymakers and investors. Public-private collaboration is essential to develop a sufficient stock of affordable rental housing to meet current demand. In this context, the financing provided by the state-owned bank, *Instituto de Crédito Oficial* (ICO), is noteworthy. Of particular importance is the "ICO Vivienda" facility, which is intended to channel €4 billion from Next Generation EU funds to finance projects aimed at increasing the supply of social or affordable rental housing and improving the existing stock of social housing.

Finally, there has been a growing demand for the financing of green real estate projects. This includes the construction of green buildings and the renovation of existing properties to improve their energy efficiency (particularly office buildings). Investors and lenders are increasingly interested in supporting projects that meet environmental, social, and governance (ESG) criteria.

Finance structures

With respect to real estate project finance, the common "propco/opco" structures continue to be applied, while "double luxco" structures for the purpose of facilitating potential enforcement actions are becoming increasingly rare (except in certain crossborder projects and in cases involving asset- or sponsor-related risks).

On the other hand, it is increasingly common for international debt funds to submit their financing agreements to Spanish law, as they are familiar with the regulations and enforcement procedures in Spain.

In projects under development involving construction, especially residential, it is common to see "bridge" bank financing that is not always refinanced later, due to the high levels of pre-sales required in the market. As a result, alternative financing is playing a greater role in transactions below €5 million (such as crowdlending and debt platforms).

On the other hand, after several years of abundant build-to-rent projects, recently there has been a decline. Many of these projects have been converted to build-to-sale due to market uncertainty, changing demand, investor interest, government policies (at both national and, especially, regional levels), as well as new regulatory frameworks.

In addition to mortgage-backed loans and credits, we would also highlight financing transactions carried out through the issuance of mortgage-backed bonds. Financially, they operate in a similar way, although the bond structure allows for the transfer of private bonds while optimizing their tax treatment (and avoiding the accrual of stamp duty). This is because, in these cases, the bond trustee of the bondholders is the registered beneficiary of the mortgage security. Nonetheless, access to the capital markets continues to be highly intermediated, and the transactional costs associated with issuing debt are high. As a result, in Spain, only a few listed real estate companies finance themselves through bond financing.

We should also mention other types of transactions and structures in the real estate sector that, depending on the circumstances, may be of interest to investors, lenders and even public authorities. These include real estate leasing, the transfer of surface rights, concession structures, and housing cooperatives, all of which are well established under our legal system and have their own specific security.

Security in real estate finance

As mentioned above, the Spanish security system offers a wide range of forms of security. It is essential to conduct a case-by-case analysis to determine the optimal enforcement strategy depending on the nature of the security and the enforcement procedures available. In real estate finance, mortgages are naturally of particular importance, as they must be formalized in a public deed and recorded in the land registry. The creation of a mortgage is subject to taxation (stamp duty), which carries a substantial cost.

Spanish mortgage law provides for different types of real estate mortgages, each of which must be analyzed on a case-specific basis to optimally accommodate current financing structures, which may include various financing tranches, derivatives, financial instruments of several ranks, or committed facilities.

The costs associated with the establishment and novation of mortgages mean that, more often than in corporate or project finance, real estate financings are executed on a bilateral basis (rather than syndicated), and they are less frequently assigned outside of distress situations.

In situations where a single "functional asset" is made up of multiple individual assets (typically the case with buildings, shopping centers, and hotels), consideration should be given, for mortgage purposes, to whether it is advisable to treat them as a single unit by grouping them or linking them through the so called "*ob rem*" grouping.

Furthermore, to formalize and register the mortgage, an appraisal (generally in the "ECO" format) that is no more than six months old is required. During the financing period, both "ECO" and "RICS" may be accepted for the purpose of calculating ratios.

In addition to the judicial or notarial enforcement proceedings, there are more efficient enforcement mechanisms, such as those established for financial collateral in the above Royal Decree-Law 5/2005, which offer special protection in the event of a debtor's bankruptcy and insolvency. There are also direct sale procedures specifically provided for in the Catalan Civil Code or that can be agreed by the parties subject to certain requirements (the so-called "Marcian clause" o "*Pacto Marciano*").

The most common practice in real estate projects is for the project's own assets to secure the debt directly. However, in projects under development and still at a preliminary stage, the lender will sometimes require the sponsor to provide an additional financial support commitment to the borrower or its partners, in the form of a comfort letter, equity commitment letter, or parent guarantees, especially to cover potential cost overruns.

To ensure the project's viability and "bankability," it is also advisable that, in addition to technical and environmental reports, a legal due diligence review be conducted in the real estate and public or administrative fields. Urban planning instruments, construction and operating permits, construction contracts, and lease agreements for the asset become key elements that must be thoroughly reviewed to guarantee the project's success and to ensure that there are no risks for the lender.

Similarly, in the context of transactions involving the acquisition of SPVs that hold real estate assets (share deals), it is necessary to take into account the financial assistance restrictions mentioned in the section on corporate finance. As a result, the real estate assets being acquired cannot be used as collateral for the acquisition debt. In these cases, alternative solutions must be considered to optimize the LTV ratio associated with the collateral, such as cross-collateralization in asset portfolio acquisition financings.

Sustainability and green real estate finance

In recent years, specific sustainability-related financing products have gained prominence in Spain's real estate finance market. These products can generally be grouped into two main categories:

- **Green financing:** Financial instruments (loans as well as bonds, as further explained below) intended to finance or refinance, in whole or in part, eligible green or social assets or projects (whether new or existing). Green projects promote a net-zero emissions economy, protect and restore the environment, facilitate adaptation to climate change, and provide other environmental benefits.

  Their economic terms may vary depending on whether the borrower or issuer meets previously agreed ambitious, relevant, and quantifiable sustainability performance targets.

  Within this category, it is common in Spain to see financing transactions for real estate developments that seek to obtain (either immediately or at a later stage) a specific energy efficiency certification. In the case of completed assets, there are also financing and refinancing transactions aimed at improving energy efficiency to a certain extent.

- **Sustainability-linked financing**: Loans and bonds tied to sustainability criteria, in which the economic terms of the financing (generally the interest rate margin) may vary depending on specific sustainability parameters.

  In the Spanish real estate sector, this product is often used in transactions involving portfolios of assets owned by major market operators.

  Financing agreements linked to sustainability are more complex, as they typically include:

  - a selection of quantifiable KPIs;
  - the determination of measurable improvements in the KPIs according to a predefined schedule;
  - the impact on the economic terms of the financing (primarily, interest rate reductions or increases);
  - reporting requirements regarding the monitoring and fulfillment of KPIs; and
  - procedures agreed for their verification.

  The market trend is evolving toward stricter requirements in the selection of KPIs to ensure the credibility and integrity of sustainability-linked loan products, particularly from the perspective of lenders and financial institutions (to prevent greenwashing, among other reasons).

In the real estate sector, the indicators are usually more closely related to environmental impact (resource consumption, emissions, waste) than to social impact (well-being at work, diversity, community impact) or ethics and governance (regulatory compliance, transparency, corporate responsibility). The most common KPIs are those linked to the reduction of carbon footprint, renewable energy consumption, efficient use of water or reduction in water consumption, and the rate of recycled or reused waste.

LMA standards have a significant influence on sustainable and green financing agreements entered into in Spain.

Distressed debt

The Spanish market for distressed real estate debt has been evolving since the real estate crisis in 2008.

The providers of this investment product are, specifically, the banking sector and the Spanish Company Managing the Assets derived from the Banking Restructuring (SAREB), in which many of these banks hold a stake.

On the demand side, there are many opportunistic investors that specialize in this type of product. These investors focus on acquiring non-performing loans (which will be addressed in the section on portfolio sales and purchases transactions) in the market, which are provisioned on the balance sheets of financial institutions and are subject to significant discounts to their face value. These may be offered individually or as part of large portfolios.

Although the sale processes for these portfolios are swift, during the course of these transactions, many foreclosure proceedings result in the properties being awarded to the assignor financial institution or being awarded in accord and satisfaction (*dación en pago*). Consequently, closing these transactions involves the transfer of numerous REOs. It is increasingly common to encounter offers in the market for portfolios composed exclusively of REOs originating from non-performing loan portfolios. In any case, the presence of REOs in portfolio sale transactions requires special treatment and adds a layer of complexity, as it introduces real estate and tax issues that may also vary depending on the geographic area.

In these sale transactions, the handling of debt relief or write-offs granted to mortgage loan debtors is particularly complex. The tax treatment of these actions requires careful and detailed analysis.

These acquisitions are carried out either with equity or through alternative financing (loan-on-loan), using non-standardized contractual structures that are tailored to the specific transaction.

In these mortgage-backed loan portfolio transactions, it should be noted that not all market participants can take advantage of the above floating mortgage (which is very common in portfolios). In particular, "non-bank" financial operators (such as those involved in alternative financing) face legal limitations in this regard. This aspect requires the implementation of alternative transfer structures, in which securitization plays a particularly important role.

III.

PROJECT FINANCE

Growth of renewable energy and regulatory challenges

The Spanish project finance market remains one of the most active and dynamic in Europe, driven by the Spanish National Integrated Energy and Climate Plan (*Plan Nacional Integrado de Energía y Clima* or PNIEC) 2021-2030. Achieving its objectives presents a challenge and will require faster permitting processes and grid expansion, as well as regulatory adjustments and further electrification on the demand side.

Solar photovoltaic and onshore wind energy predominate. By the end of 2025, installed renewable capacity is expected to exceed 75 GW, with solar photovoltaic surpassing 38 GW (out of Spain's total installed capacity of 130 GW). However, the rapid growth of these technologies has outpaced both demand growth and the development of the energy grid. This, together with the lack of new grid connection points and delays in grid reinforcement projects, affects project revenues and creates uncertainties regarding long-term "bankability." The electrification of industry and the slow adoption of electric vehicles (EVs) have further increased this imbalance, limiting the market's ability to absorb the surplus renewable output.

While hybridization with storage is emerging as a solution, Spain is lagging in the deployment of large-scale storage due to regulatory uncertainty and the lack of clear capacity market mechanisms. Lenders for these types of projects typically require the sponsor to hold the borrower harmless from any damages resulting from hybridization, and also require the sponsor to contribute equity, seeking to ensure that debt exposure is limited to stable revenue-generating components. However, 2025 is expected to mark a turning point, with the first structured financings of standalone battery storage systems, although financing structures remain in the early stages of development.

Driven by increasing electricity demand from the expanding digital infrastructure sector, Spain's data center market is expanding rapidly, particularly in Madrid, Barcelona, and emerging secondary markets such as Aragón and Extremadura. In 2024 alone, newly installed data center capacity exceeded 600 MW, and projections for 2025 point to continued growth, driven by investments from global technology companies and the development of artificial intelligence. In this regard, data centers are expected to increasingly absorb surplus renewable generation, which will mitigate curtailment and improve project finance conditions.

Biomethane is gaining ground as a financeable renewable fuel, driven by regulatory incentives and the rising cost of carbon emission allowances under the EU Emissions Trading System (EU ETS). Spain is one of the leading European markets in terms of biomethane potential, with over 50 new projects in development and an ambitious production target of 20 TWh by 2030, according to the PNIEC. Production growth is expected to continue in 2025, as new facilities begin operations and regulation improves. Incentives have been introduced for injecting biomethane into the gas grid, such as direct subsidies and feed-in tariffs, which are boosting financing activity. The outlook for this year is that lenders will broaden the range of financing options for biomethane plants, favoring long-term sales agreements with industrial buyers seeking decarbonization. However, arranging financing will be a challenge for projects that rely on the sale of biomethane on the open market, due to price volatility.

Investors are closely studying emerging technologies that could soon reshape the market:

- **Offshore wind:** Spain has set a target of 3 GW by 2030 under the PNIEC. However, regulatory hurdles and slow permitting processes make achieving this milestone uncertain. Projects in early stages are making progress, but delays in approvals are a concern for sponsors and limit their immediate scalability.
- **Green hydrogen:** Investment is flowing, but commercialization remains a medium-term goal. "Bankability" will depend on securing long-term purchase agreements with sectors that are hard to decarbonize.
- **Carbon capture and storage (CCS):** Spain is assessing potential investments in CCS, with industrial clusters exploring pilot projects. However, large-scale deployment of CCS remains uncertain. Depending on how carbon pricing mechanisms evolve, CCS could become a significant component of Spain's decarbonization strategy.

The financing of basic infrastructure projects such as transportation (roads, ports, airports) and social infrastructure (hospitals, schools) is limited to the refinancing of existing facilities or brownfield projects, due to public budget constraints and limited incentives for the private sector. Specific opportunities arise in connection with essential infrastructure upgrades, digitalization initiatives, and sustainability-linked refinancings.

Power purchase agreements

Commonly known as "PPAs," these agreements have become increasingly relevant in recent years when structuring and planning project finance. According to a report by Pexapark, 47 operations were concluded in Spain in 2024, with a total volume of 4.66 GW, positioning the country as the European leader by volume. In the case of solar technologies, this trend is driven in part by the forecast for low spot market prices (including recurring negative prices at certain times of the year), which is caused in part by the massive deployment of renewable energy and the lack of storage solutions, resulting in price cannibalization among installations during the daytime.

PPAs can be physical (where the energy produced by the renewable asset is actually delivered to the purchaser) or virtual (where the energy produced by the renewable asset is not delivered, but both the producer and the purchaser settle the price difference of the energy). The pricing structure may vary. Typically, the parties will choose between a fixed-price PPA or a market-following arrangement with a discount, which allows the purchaser to capture any upside in the spot price.

PPAs offer advantages for both parties. On the one hand, they enable the producer to secure a steady cash flow from its asset, thereby improving its ability to obtain financing and ensuring a predictable return for the sponsor in times of price uncertainty. On the other hand, the purchaser secures clean energy at a specified price and, in virtual PPAs, secures the share of environmental attributes linked to the committed volume, helping it to achieve its sustainability goals.

The "bankability" of a PPA will mostly depend on three factors:

- The financial strength of the counterparty is paramount, since a substantial portion of the project's revenues will depend on payments made by the purchaser.
- The term of the PPA is a particularly important factor. The longer the term, the longer the plant will benefit from a predictable cash flow, favoring financial institutions' entry into long-term, stable contractual relationships.
- The ability to provide for contractual mechanisms to prevent potential delays in construction or permits—which normally entails the obligation to pay damages to the purchaser—is of utmost importance. In this regard, mechanisms such as the possible substitution of the delayed project are very common in PPAs.

Structures in project finance

One of the main consequences of the mass deployment of renewable energy installations in Spain is the enormous amount of credit that developers and sponsors require to finance construction and bring projects into operation. While the traditional financing structure—where one or several commercial banks provided financing to construct a single asset—remains in use and is still the predominant form, in recent years, more sophisticated financing solutions have been introduced.

In this context, "holdco" financing is here to stay This transaction is structured through a corporate reorganization of the developer that pools several assets under a debt-free holding company. Financial institutions provide financing to the holdco, taking as collateral its shares as well as all assets and credit rights of the projects. Once the financing is granted, the debt is pushed down the structure to finance project costs through intercompany loans.

This structure offers significant advantages for all parties involved:

- Efficiency and cost reduction, as it eliminates the need to negotiate multiple individual agreements and facilitates the administrative management of the financing agreement.
- Risk mitigation, as projects can balance risk among themselves and mitigate any potential default if one project does not perform as expected.
- Synergies with project agreements, as this allows, for example, the output of several facilities to be committed to a single purchaser under one PPA, thereby maximizing leverage.

Additionally, in recent years, a type of financing has been developed that is less related to project revenues but remains a key factor for the execution of the project, namely, equity financing. Senior lenders will often finance between 60% and 80% of project costs and will require the sponsor to make equity contributions before disbursements, creating a significant need to finance these equity contributions.

This type of equity financing is riskier, as the lender will be structurally subordinated to the senior lender, but, as a result, it generates higher interest rates. From a security perspective, it normally involves the creation of a holdco at a level above the senior structure, which is the borrower. The rise of alternative finance players, such as funds or insurance companies, has led to significant growth in this type of financing.

The role of sponsors in project finance

The role of sponsors varies depending on the structure of the agreements, risk allocation, and financing conditions. Depending on the nature of the project and its "bankability," as well as the risk appetite and expectations of the lender, different approaches to recourse against the sponsor may arise.

The sponsor's role is generally classified into three main categories:

- **Full recourse and guarantees:** In transactions where the sponsor provides guarantees and full recourse, lenders benefit from a direct claim against the sponsor's balance sheet. This structure is often used in projects with significant construction risk or unproven technology, where lenders require additional security. While this approach offers competitive financing terms, it implies full liability for the sponsor and, in practice, treats the debt as corporate finance rather than true project finance.
- **Limited recourse and structured support**: This is the most common approach. Limited recourse structures balance risk between the sponsor and the lenders. In these transactions, sponsors generally provide guarantees or commitments to inject equity (within agreed limits) during the construction phase, but their liability is released once the project reaches commercial operation. Legal and technical risks identified during the due diligence process are also generally covered by the sponsor's guarantee.
- **Non-recourse financing:** This entails full allocation of project risk. Under a completely non-recourse structure, project financing is secured solely by the project's cash flows and assets, without recourse to the sponsor's balance sheet. While this is the most attractive structure for sponsors seeking to preserve their credit capacity, it requires "bankable" project fundamentals, such as long-term purchase agreements, stable regulatory frameworks, and well-structured risk mitigation mechanisms. Lenders generally impose strict contractual conditions, higher debt service coverage ratios, and reserve requirements to compensate for the absence of sponsor support.

Regardless of the recourse structure, sponsors are expected to inject between 20% and 40% of the total project costs as equity. Lenders generally require these equity injections as a prior condition to debt disbursements.

Recourse against sponsors is normally intended to mitigate financial risks and project completion risks. The form these guarantees take varies depending on the lender's requirements and the specific characteristics of the project:

- **Cost overrun guarantees:** Sponsors agree to inject additional equity to cover cost overruns relative to the baseline scenario. These overruns may result from unforeseen expenses or delays that require additional funding to achieve the commercial operation date (COD).

  To mitigate construction risk and reduce the sponsor's exposure to cost overruns, lenders often require projects to be developed under turnkey engineering, procurement, and construction (EPC) contracts. These contracts assign all responsibility to the contractor for delivering a fully operational project within a fixed budget and schedule, thereby shifting the risk from the sponsor. By entering into lump-sum, fixed-date, and guaranteed-performance contracts, sponsors can limit their financial exposure and provide greater certainty to lenders regarding the successful completion of the project.

- **Delay guarantees:** Sponsors guarantee or inject equity to cover debt service if the project does not achieve COD on time. Typically, this includes coverage for six months of debt service.

In some transactions, this recourse is reduced or eliminated entirely if a reserve account is established to cover this risk (normally amounting to 3% to 5% of the total project cost, plus six months of debt service). These accounts serve as a resource if any of the above risks materialize. Generally, the reserve account is provisioned before or during construction, and the balance is released on achieving COD, often without the need to comply with standard conditions for dividend distributions. This reserve account may also be replaced by a credit facility, in which case the disbursement is deferred until the cost overrun or delay actually occurs, significantly reducing financing costs in scenarios where performance is favorable.

In portfolio financings, where borrowers are part of a Spanish tax consolidation group, sponsors may be required to provide additional guarantees to mitigate risks related to tax obligations. Since tax consolidation can create joint liabilities among group entities, lenders often require sponsors to ensure that project cash flows remain isolated and are not impacted by group-level tax liabilities.

Flexibility in project financing agreements

Flexibility within project finance documentation is increasingly important because it enables lenders to effectively manage projects and respond rapidly to market and operational changes without breaching financing conditions. Project finance agreements incorporate flexibility in three main areas:

- **Amendments and replacements of project contracts:** Borrowers are generally allowed to amend or replace the underlying project contracts, if these changes do not materially impact the project's financial soundness or operational reliability. The contracts usually set out express conditions for pre-approved modifications, allowing for improvements to terms and conditions. However, amendments to certain reserved terms and conditions (such as parties, payment schedules, or deadlines) are subject to the lender's consent. Outside of cases where automatic consent is provided (e.g., for minor or administrative changes), these amendments or replacements require the approval of the technical advisor or the lenders.
- **Changes in partners and sponsors:** Flexibility also extends to changes at the partner or sponsor level, typically through the concept of a "permitted investor." To avoid a change of control, financing documents establish clear criteria that define new investors. These often require that new investors be reputable entities from OECD countries, with substantial financial resources or solvency (especially if any guarantees or financial commitments of the sponsor remain in effect), relevant operational experience, and a proven track record in similar asset classes. Provided these conditions are met, changes in sponsors or capital restructurings are permitted without triggering lender veto rights or events of default, thereby enabling sponsors to strategically adjust their investment positions.
- **Sale of project companies financed under portfolio financings:** Portfolio financings include mechanisms that allow for the sale or disposal of individual financed companies or projects within the portfolio structure. This flexibility enables sponsors to manage their investment dynamically, aligning the portfolio with strategic objectives or market opportunities. The conditions typically required by lenders to approve these disbursements include maintaining predefined financial ratios (such as debt service coverage ratios or loan-to-value ratios), ensuring that the overall portfolio continues to comply with the debt sizing criteria, and the prepayment of the principal of the borrower that is sold.

IV.

PORTFOLIO SALES AND PURCHASES

Structure of portfolio sales and purchases transactions

Since 2012-2013, the volume of portfolio sales and purchases transactions has grown significantly, and the assets involved and the structures of the transactions have been continuously evolving to adapt to the specific needs of the seller, the quality of the portfolios, and market conditions.

While financial institutions continue to be the main players in this market, telecommunications operators, large supermarket chains, and, in general, companies with substantial portfolios of accounts receivable from their customers also sell these types of assets.

The structures of these transactions fall into two basic types of credit portfolios:

- **Unsecured portfolios:** These lack collateral in the form of specific assets, and therefore, present a higher risk for investors. They are primarily composed of personal loans, post-foreclosure debt (colas hipotecarias), credit cards, and overdrafts. Since the only formality required is notification to the debtors, unsecured portfolios are sold almost exclusively through a direct sale structure. This involves executing a credit sale agreement between the seller and the purchaser, whereby the credits are assigned directly to the purchaser, who assumes all the rights and obligations associated with the credits, including the right to receive payments from the debtors.

  The direct sale of unsecured portfolios usually involves a significant discount on the purchase price due to the higher risk of debt recovery. In some transactions, the seller prefers to retain portfolio management, transferring only the economic rights through a sub-participation or "silent assignment" structure—that is, without notification to the debtors—but these arrangements represent a significantly smaller portion compared to direct sales.

- **Secured portfolios:** These portfolios are backed by assets (generally mortgaged real estate), making them more attractive to investors, as they can benefit from the additional value of the underlying properties. Their sale is more complex due to the need to transfer the benefit of the mortgage. These transactions require both the purchaser and seller to have a more detailed understanding of the portfolio and the mortgage collateral. The process also involves a notary public who formalizes the transaction and is responsible for verifying that the mortgages being transferred match the information provided by the seller to the purchaser during the negotiation process.

  The basic structures currently used for the sale of secured portfolios are as follows:

  - **Direct sale:** In addition to the sale agreement under which the credit or loan agreement is assigned, the seller must execute notarial deeds of assignment of the mortgages with the purchaser. This requires registering the assignment in all land registries where the mortgaged properties are located, resulting in significant transaction costs (taxes and registry fees).

    This has been the most commonly used structure, particularly for the sale of NPLs. However, the reduced exposure of financial institutions to this type of loan and the entry into force of Act 5/2019 on Real Estate Loan Agreements—which requires the purchaser to be registered with the Bank of Spain—has led to a decrease in the volume of transactions of this kind. It is expected that with the upcoming "Servicers Act" (discussed below), activity in these types of transactions will be reactivated.

  - **Issuance of financial instruments and securitization:** The seller (bank) issues financial instruments backed by the mortgage loans in the portfolio, in the form of mortgage participation certificates (PHs) and mortgage transfer certificates (CTHs).

    The purchaser underwrites the PHs and CTHs and generally transfers them to a Spanish asset securitization fund (FTA) established by the purchaser. The bank retains the formal ownership of the assigned loans and the mortgage portfolio backing them and, therefore, may maintain the relationship with the debtor. The bank must also comply with the formal obligations required under the applicable regulations.

    Under this structure, it is not necessary to register the assignment of the mortgages, which makes it much more efficient from a cost and management perspective, and also avoids the need for party substitution in cases where foreclosure proceedings have already been initiated. A disadvantage is that the seller must continue to manage the portfolio as agreed with the purchaser and in compliance with applicable regulations. This includes reporting on the status of those loans to the Bank of Spain. Nonetheless, especially in performing or sub-performing portfolios, this structure allows the financial institution to maintain its relationship with the debtor regarding other products, such as personal loans, insurance, and other cross-sales that generate significant profitability.

On the purchaser's side, although reliance on the bank initially limits its management capacity, in practice, when a loan becomes continuously non-performing, it is usually expected that loan management will be transferred to a specialized servicer. This servicer usually streamlines recovery or monetization processes and must at all times comply with applicable regulations, including codes of good governance, consumer protection laws, and the above real estate loan agreement regulations.

The new "Servicers Act"

The transposition of Directive (EU) 2021/2167 on credit servicers and credit purchasers through the Law on Credit Servicers and Purchasers (commonly referred to as the "Servicers Act") introduces significant changes to our legal framework that impact the industry of purchasers and sellers of non-performing loans. The Servicers Act establishes a uniform regulatory framework across the European Union, which promotes market integration as well as greater competition and efficiency in the distribution of NPLs. The main new features it introduces are as follows:

- **Authorization and registration:** To manage NPLs, authorization from the Bank of Spain is required. Servicers must be registered in the Bank of Spain's registry once authorized.
- **Information provided to purchasers of the loans:** Credit institutions must provide potential purchasers with the necessary information regarding the credits and their collateral to enable an adequate assessment of value and the likelihood of recovery prior to the sale.
- **Appointment of servicers:** Purchasers of loans domiciled in Spain or in another EU country operating in Spain must appoint a servicer or a credit institution to manage NPLs held by individuals, including consumers, self-employed workers, micro-enterprises, and SMEs.
- **Representative in Spain:** Purchasers of loans that are not domiciled in the EU must appoint a representative with a registered office in Spain to comply with the obligations established by the regulations.
- **Debt renegotiation:** Through amendments to Act 16/2011 on Consumer Credit Agreements, debt renegotiation policies are introduced to facilitate agreements prior to initiating legal action against the debtor. Moreover, lending institutions are required to offer payment plans to debtors in situations of economic vulnerability, including minimum debt relief options, which may be adjusted based on the price the seller can obtain in the market.

- **Amendments to the act on real estate loan agreements:** Significant amendments are introduced to clarify the obligations and procedures related to the assignment of real estate loans. Among other aspects, it clarifies that purchasers of NPLs are not required to register as real estate lenders with the Bank of Spain. This resolves an obstacle that previously jeopardized or greatly complicated the sale of these loans. This amendment ensures that purchasers of NPLs can operate without the need to register as real estate lenders, thereby facilitating sale processes and removing the uncertainty that had concerned the market.

Debtor notices ("hello letters")

Under Spanish general civil law, notifying the debtor of the assignment of the credit is not a requirement for the validity of the assignment (nor is it for mortgage loans), but it is necessary for the assignment to be enforceable against the debtor and to ensure that any payment made to the previous creditor does not have a discharging effect. This is therefore an important aspect of credit sale transactions. It also adds an additional layer of complexity, given that certain regions, as detailed below, impose additional requirements beyond those established under the above system. This regional legislation requires a detailed analysis regarding its scope of application and effects. Furthermore, there are questions regarding the constitutionality of some of these provisions, as they impact areas that should be regulated by the state. This requires ongoing monitoring of regional regulations on these matters and of court rulings related to them.

Below, we include a list of the main regulations established by the autonomous regions on this matter.

- **Andalusia:** In the case of loans secured by mortgage collateral on housing formalized in Andalusia, the regional financial consumer protection regulations require the seller to explicitly and reliably inform the consumer (borrower and, where applicable, the guarantor) of the transfer of the mortgage-backed loan (including through the issuance of PHs or CTHs).
- **Valencia:** The regional consumer protection regulations had previously established a notification regime—with a high degree of detail and formality—for consumers (borrowers, guarantors, or endorsers, as applicable) regarding the assignment of their loans (including through securitization), whether mortgage-backed or unsecured (without collateral). This regime has been repealed through an amendment to the Act on the Statute of Consumers and Users, effective from June 2025.
- **Navarre:** The Compilation of Civil Law of Navarre provides, in Act 511, for a right of redemption (*retracto*) by the debtor in the event of an assignment of its loan for valuable consideration

(whether mortgage-backed or ordinary). In this context, the regulation requires the seller to provide the debtor with reliable notification indicating the identity and address of the purchaser, as well as the price of the assignment. Furthermore, if the assignment occurs during enforcement proceedings, the court will require the seller to disclose the price of the assignment so that the debtor can exercise its right.

Despite the above, judicial doctrine holds that the above regional regulation would not apply to assignments of claims arising from a commercial credit or loan, such as those granted by credit institutions.

- **Castilla-La Mancha:** The Consumers Statute in Castilla-La Mancha establishes that entities assigning a mortgage or ordinary loan to a securitization fund must notify the borrowers in writing of this transfer. This regulation is pending further development, although it appears that the Government of this autonomous region may seek to repeal it.
- **Catalonia:** The Civil Code of Catalonia, anticipating the regulation of a right of redemption that finally did not materialize, establishes the seller's non-waivable obligation to notify the debtor (or non-debtor mortgagor) of the assignment of the mortgage-backed loan or credit.

  In the absence of case law regarding this provision, there is a degree of uncertainty as to its scope of application and effects. In this sense, it could be argued that they are limited to the area of enforceability and, in particular, to the procedural standing of the mortgagee in foreclosure proceedings.

Consumers and usury

Loans granted to consumers are subject to extensive legal regulation in Spain, ranging from the above act on real estate loan agreements—when the loan is secured by a mortgage on residential property—to the act on consumer credit agreements, as well as the general consumer and user protection regulations, which also govern unfair terms in personal loans, unsecured loans, or loans linked to the sale and purchase of consumer goods.

Banking litigation in the financial sector initiated by consumers is intense in Spain due to the rapid evolution of consumer protection regulations and the numerous rulings by national courts and the Court of Justice of the EU, which require ongoing monitoring and analysis given their significant impact on credit portfolio transactions involving consumer debtors.

The high level of activity in the secondary market for bank loans in Spain results in highly heterogeneous portfolios, often including loans that have already been assigned multiple times in the past and may be quite old. Consequently, it is common for loans to have been granted

under terms and conditions that, in light of recent case law and regulatory changes, prompt debtors to file claims seeking the annulment of certain clauses as abusive or to challenge the loan as usurious.

Since the risk of debtor claims is transferred to the purchaser from the moment it becomes subrogated to the creditor's position in the loan, a key point in negotiating the portfolio sale agreement is the distribution between the parties of liability arising from the existence of unfair terms or usury, as well as losses resulting from claims by debtors whose claims are upheld.

Unfair clauses are considered void from inception, which results in their removal from the contract. If the contract cannot remain in force without the voided clause, the entire contract would be declared void. However, as an exception, if voiding the entire contract would be detrimental to the consumer, the void clause may be replaced by a provision of national law.

These scenarios may also result in the potential restitution of amounts unduly collected by the original creditor, which will be required to pay them to the relevant debtor.

The courts may determine the clauses are voidable due to a lack of transparency or because they are deemed abusive, following an analysis, among other issues, of:

- the contractual and pre-contractual information provided to the debtor;
- the debtor's payment capacity and solvency;
- the form and content of the loans, as well as the placement and clarity of the clauses included in the loan agreements; and
- the determination as to whether the clause was or was not individually negotiated and, contrary to the requirements of good faith, causes a significant legal imbalance between the parties to the detriment of the consumer.

In addition to the above, there is also the risk of committing usury by failing to comply with the provisions of Spanish law on this matter, particularly with respect to loans without mortgage collateral. Usurious loans are void from inception, and the parties must return the amounts exchanged, with no interest accruing on the principal lent, consequently triggering the obligation to reimburse the borrower for all amounts paid in that regard. Since 2015, there has been a surge in lawsuits alleging usury, especially in connection with products such as revolving credit cards. The key elements for determining whether a loan is usurious are the normal market interest rate and the concept of an interest rate that is "significantly higher" than this normal rate, both of which have been clearly defined by recent case law on the matter.

Protection of vulnerable debtors

In recent years, significant legislative efforts have been made in Spain to protect vulnerable debtors. This issue has a notable impact on credit sale transactions and is highly complex, as a consistent regulatory framework has yet to be established. Each notable regulation in this area, which will be cited below, addresses the matter from different angles, and questions frequently arise regarding their interpretation.

- One of the first significant pieces of legislation in this area was Act 1/2013 on measures to strengthen protection for mortgage debtors, debt restructuring, and social rental housing. This law introduces various tools to alleviate the burden on vulnerable mortgage debtors. It enables vulnerable debtors to negotiate the terms of their debt with financial institutions to reduce installments or extend repayment periods, and it establishes a temporary suspension of evictions for vulnerable debtors who are unable to pay their mortgage due to exceptional circumstances, such as unemployment or serious illness. The suspension has been extended until May 15, 2028. Furthermore, in the event of foreclosure, the law requires that social rental housing be offered to vulnerable debtors who have been evicted from their primary residence.
- Royal Decree-Law 6/2012 establishes a code of good practices to which the vast majority of banks operating with consumers in Spain have voluntarily adhered. The above code provides for three stages of action. The first stage aims to achieve a viable restructuring of mortgage debt by applying to loans or credits a grace period on principal repayment and a reduced interest rate for four years, as well as an extension of the overall repayment term. Second, if the initial restructuring proves insufficient, the institutions may, at their discretion, offer debtors partial debt relief on the total amount owed. Finally, if neither of the previous measures succeeds in reducing the debtors' mortgage burden to financially sustainable levels, the debtors may request, and the institutions must accept, accord and satisfaction (*dación en pago*) in full discharge of the debt. In this latter case, families may remain in their home for a period of two years by paying an affordable rent.
- Act 25/2015, on the second chance mechanism, reduction of financial burden, and other social measures, allows individuals—including those facing personal bankruptcy—to restructure or partially discharge their debts through a judicial process. Debtors may apply for the discharge of outstanding debt (EPI) if they meet certain requirements, such as acting in good faith and attempting to reach an out-of-court settlement with creditors, thereby giving debtors a "second chance" with respect to their financial situation. In some cases, the debtor may be released from debts they are unable to pay, after fulfilling certain requirements and completing a negotiation process.

- In the context of the COVID-19 pandemic, Royal Decree-Law 11/2020, of March 31, established extraordinary and temporary measures for individuals affected by the pandemic and experiencing economic vulnerability, such as a suspension of evictions for tenants or, in certain cases, occupants of housing without legal title. This measure, initially intended for a limited period, has been extended until December 31, 2025.
- The 2023 Housing Act introduces protective measures for tenants and homeowners in situations of vulnerability, including a temporary moratorium on evictions. Furthermore, the suspension of evictions from primary residences to protect vulnerable groups has been extended until May 15, 2028. The law also places limits on rent increases in strained housing market areas, seeking to prevent vulnerable debtors from being displaced due to disproportionate rent hikes. In addition, it promotes social rental housing for individuals facing economic hardship, helping to alleviate financial pressure.

V.

CORPORATE DEBT

The Spanish market and preferences of major issuers

In the Spanish market, public corporate debt issuances have shown significant growth in recent years. This increase is also evident in private placements, which are directed at a limited number of institutional investors and do not require the preparation of a prospectus, with the securities not being admitted to trading on markets. However, there is still a way to go for financing through the issuance of medium- and long-term bonds or promissory notes (both public and private) to achieve a prominent place among companies' preferred financing methods. This is encouraging both for potential issuing companies—which, after properly assessing the benefits of debt issuances in their various forms, will be able to reduce their near-exclusive reliance on bank financing—and for investors (investment funds, insurance companies, and other institutional investors) seeking efficient and diversified investment opportunities.

Currently, major Spanish issuers continue to favor international alternative markets or multilateral trading systems to place their fixed-income securities (medium- and long-term bonds, promissory notes). However, some alternate between foreign placements, on the one hand, and issuances and admissions in national markets such as AIAF—the regulated Spanish private fixed-income market—on the other, thus covering a broader range of investor profiles. Some of the issuances conducted in 2024 have also been used to repay previous issuances by taking advantage of improved interest rate conditions, including the repurchase of outstanding securities. This trend is expected to continue in 2025.

Issuances by small- and medium-sized enterprises

For issuances by small- and medium-sized enterprises (which make up the majority of Spain's business ecosystem), the Spanish Alternative Fixed-Income Market (MARF) has undoubtedly become the established market of choice.

In this market, increasingly simple and efficient processes enable public limited companies (*sociedades anónimas*) and private limited companies (*sociedades limitadas*)—the latter being subject to the issuance cap of twice their equity established under the Spanish Companies Act—as well as foreign entities, to issue both medium- and long-term bonds (for longer-term financing) and promissory notes (for short-term financing). These can be issued either as standalone offerings or under a program (in addition to other instruments such as project bonds, convertible bonds, and preferred securities).

The popularity gained by this market over the nearly 12 years since it was established in 2013 does not appear likely to decrease in the short term, as it is expected to retain recurring issuers and attract new ones for both conventional and sustainable financing. Although the growth in this market is significant, it still represents only a small percentage of the Spanish economy and of the large number of potential issuer companies.

CNMV Activity Plan for 2025

In the 2025 Activity Plan of the Spanish Securities and Exchange Commission (CNMV), recognizing the lack of monitoring and oversight of private issuances (understood, a priori, as those not admitted to trading on a regulated market or on a multilateral trading facility), the CNMV highlights the need to assess to what extent the scope of reporting and oversight requirements for companies conducting private issuances should be expanded, following the principle of "same activity – same risk – same supervision."

The CNMV has also announced its intention to establish, in 2025, a specific framework for bond issuances by small businesses, following the recommendations of the OECD report on revitalizing the Spanish capital markets and applying the principle of proportionality to adapt regulatory requirements to the realities faced by SMEs.

Growth of sustainable debt issuances

To the extent possible, Spanish issuers continue to seek to structure their bond issuances as green, social, sustainable, or sustainability-linked, thereby demonstrating their commitment to sustainability goals. This is evidenced by the fact that during 2024, sustainable debt issuances grew at a faster rate than sustainable bank financing. According to the 2025 Ofiso Annual Report, sustainable medium- and long-term bonds issued in Spain represent 37% of total sustainable financing. Furthermore, in 2025, Spain surpassed the threshold of €100 billion in issuances of this type of debt, establishing itself as a significant issuer within the European Union.

At the end of 2024, the European Green Bond Regulation came into effect, making the "European green bond" or "EuGB" label available to green bond issuers who comply with this regulation in the EU. In addition to disclosure requirements, the key element introduced by this Regulation is the requirement that the proceeds raised be invested in economic activities that comply with the EU Taxonomy. The first European green bonds were issued by A2A S.p.A. in January 2025. In Spain, Iberdrola was the first company to issue bonds with the European green bond label in May 2025. Furthermore, this €750 million transaction was also the first to adhere to both standards: the European green bond standard and the Green Bond Principles (GBP) of the International Capital Market Association (ICMA).

The new EuGB label is expected to coexist alongside green bonds issued according to the GBPs, especially during 2025, given that the European standard has only recently been implemented.

The European Green Bond Regulation introduces a voluntary disclosure framework for bonds marketed as environmentally sustainable (that is, bonds whose issuer provides investors with a commitment, or any form of pre-contractual statement, that the bond proceeds will be allocated to economic activities contributing to an environmental aim but that do not meet the requirements of the EU Taxonomy) as well as for sustainability-linked bonds. The European Green Bond Regulation delegates to the European Commission the authority to adopt a delegated regulation establishing the disclosure templates to be used by issuers wishing to adhere to this disclosure regime. In this respect, in July 2025 the European Commission adopted the Communication C72025/2277, which sets out non-binding guidelines for pre-issuance disclosures (also called factsheets) and including the relevant templates as set out in the Appendices to the Communication, and the Commission Delegated Regulation (EU) 2025/753, establishing the content, methodologies, and presentation of the information to be disclosed in the templates for periodic post-issuance disclosures. This will require issuers and market participants to closely monitor the evolution of this market in 2025, particularly with respect to the similarities and differences between the Regulation's disclosure templates and the requirements set out by ICMA.

The CNMV will oversee the information provided in prospectuses according to the European Green Bond Regulation. Issuers will choose which framework—the transparency and strict rigor of the European Green Bond, or the flexibility and market acceptance of the GBP—best aligns with their objectives and investment strategies.

Additionally, the European Listing Act Regulation came into effect in December 2024, amending, among others, the European Prospectus Regulation. The changes will be implemented in phases (as explained below). One change, applicable from June 2026, is the introduction of enhanced ESG disclosure requirements for debt securities marketed as considering ESG factors or pursuing ESG objectives. The European Commission must further develop this matter, and we expect that it will do so, where applicable, in line with the European Green Bond Regulation. This harmonization of requirements will likely increase transparency and encourage innovation in sustainable finance.

In June 2024, ICMA introduced its guidelines for Sustainability-Linked Loan Bonds (SLLBs) to encourage the financing of sustainability-linked loan portfolios structured according to the Sustainability-Linked Loan Principles of the Loan Market Association (LMA) and the Loan Syndications and Trading Association (LSTA). In 2025, it will be interesting to see how the market adopts these guidelines and whether they will impact the sustainability-linked financing market.

Regulatory developments

Debt market participants in Spain, as in other EU countries, are closely monitoring the impact of measures adopted by the European Commission under its Capital Markets Union (CMU) strategy, as well as measures to be introduced in 2025 and beyond under the EU's Savings and Investment Union (SIU) strategy. Below, we outline the current evolution of these measures.

- **Development of the Capital Markets Union (CMU)**

  At the end of 2024, to keep advancing the development of the CMU, the EU published the European Listing Act Regulation, which aims to make EU capital markets more attractive and accessible for companies, especially SMEs, to diversify funding sources beyond bank lending. The Listing Act is a regulatory package that amends the Prospectus Regulation, the Market Abuse Regulation (MAR), MiFIR, and MiFID II, introduces a new directive harmonizing regulation on multiple voting share structures, and repeals the Listing Directive. While the greatest impact will be felt in equity markets, it also includes provisions that should facilitate access to debt capital markets. In particular, the changes introduced by the Listing Act to the Prospectus Regulation—which are expected to be implemented in phases between December 2024 and June 2026—should promote access to debt capital

markets by expanding the exemptions from the obligation to publish a regulated prospectus, simplifying and standardizing the prospectus, reducing costs, and improving regulatory clarity, with particular benefit for SMEs.

Additionally, the Listing Act Regulation amends MAR, simplifying the disclosure regime that issuers of debt securities marketed in EU markets (whether regulated or not) must comply with. In particular, it simplifies and clarifies the rules for disseminating insider information in prolonged processes, revises and clarifies the safe harbor for market soundings, modifies the thresholds applicable to the issuer's managers and directors (persons discharging managerial responsibilities or PDMRs)—specifically with regard to notification requirements and thresholds during blackout periods—and establishes a system of sanctions proportionate to the size of the companies.

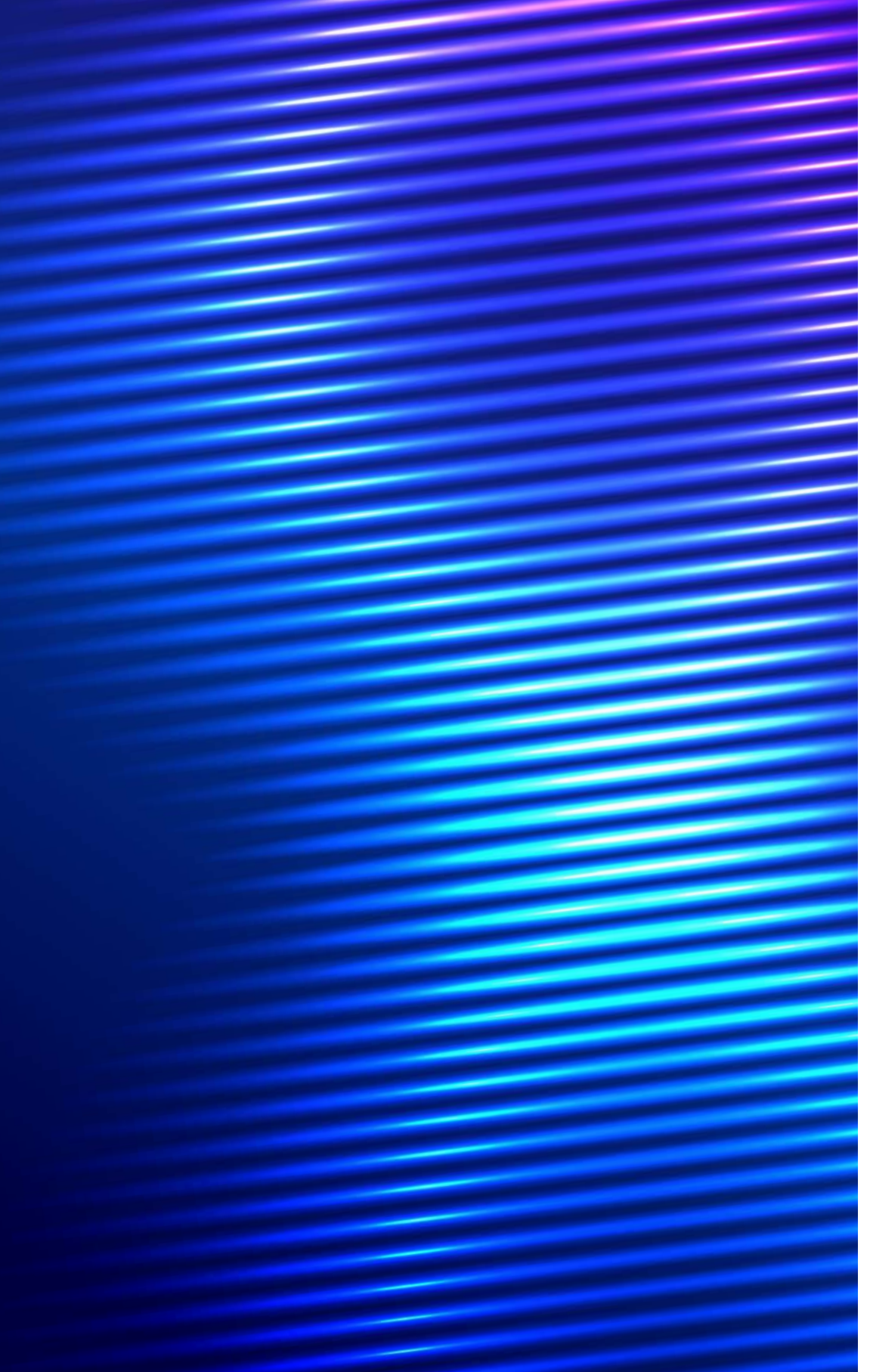
- **Development of the Savings and Investment Union (SIU)**

  In early 2025, based on the Draghi Report, the European Commission recognized that tackling Europe's current challenges—such as climate change, rapid technological advances, and new geopolitical dynamics—will require substantial investments, estimated at an additional €750–800 billion per year until 2030. A significant portion of these additional investments affects SMEs and innovative businesses, which cannot rely solely on bank financing. In this context, the SIU launched by the EU Commission in March 2025 aims to improve how the EU's financial system channels savings into productive investments and to broaden the range of funding sources available to both businesses and individuals. The SIU's starting point is the existing CMU and the Banking Union projects, but it takes a more holistic approach. Its goal is to leverage the strengths of both the capital markets and the banking sector to improve the depth and liquidity of the EU financial system.

On the other hand, it is expected that the EU and, consequently, its markets will soon follow the recent trend in the US capital markets to shorten the settlement period for financial instruments. This shift presents a series of technical and operational challenges. In this case, the change is not a regulatory requirement but rather the result of market participants reaching a consensus on best practices. To facilitate the transition in the EU to a T+1 settlement period (one day after the trading date), a proposal is currently being processed to amend the Regulation on improving securities settlement in the European Union and central securities depositories (known as the CSD Regulation). At present, this regulation provides for a T+2 period, meaning that the theoretical settlement date must not be later than the second business day after the trading date.

Finally, in January 2025, Spain published the draft amendment to Royal Decree 1066/2007, of July 27, concerning the regime for public takeover bids (*OPAs*), with the aim of extending its application to Spanish MTFs according to the Spanish Securities Market and Investment Services Act.

Without going into the details of the content and scope of the regulation, it is worth highlighting that it extends, with certain nuances, the rules of the current Royal Decree 1066/2007, of July 27, on the regime for public takeover bids, to Spanish MTFs. Therefore, it is expected that the new regulation will encourage public offers for companies listed on Spanish MTFs within a clearly defined and tested regulatory framework. This may also generate new activity in the debt markets, both due to seeking financing to carry out these transactions and due to the impact on the outstanding debt issuances (both plain vanilla and convertible bonds) of companies listed on these markets. Issuing fixed-income securities has been a frequently used tool by companies listed on alternative markets, and particularly those listed on BME Growth, as part of their strategies for efficient and orderly growth.



VI.

SECURITIZATION TRANSACTIONS

Reform of the EU securitization regulation

Securitization is an essential tool for the economy, as it has traditionally contributed to financing real economy assets, improving the availability of credit, and enabling banks to free up their balance sheets to continue lending. Furthermore, securitization is crucial for diversifying sources of financing within the economic system, which helps maintain financial stability on a global scale. By distributing risk among a larger number of investors, securitization reduces risk concentration within the banking system, thereby lessening the potential impact of financial crises.

However, current regulations impose significant challenges that have limited the effectiveness and appeal of securitization. The current volume of placed issuances has declined significantly over the past decade. Excessive capital requirements, along with complex disclosure and due diligence obligations, have made securitization economically unviable for many issuers and investors.

The Simple, Transparent, and Standardized (STS) securitization framework, which was introduced to help revive the securitization market, has not achieved its goal. Furthermore, the lack of adequate recognition of the quality of STS securitizations in capital and liquidity rules has created an uneven playing field compared to other fixed-income products and non-securitized loans.

To revitalize the securitization market, it is crucial to address these regulatory imbalances. This should include, among other measures, recalibrating the capital treatment under the CRR and Solvency II Regulations to better reflect actual risk and reduce distortions, simplifying the procedures for assessing Significant Risk Transfer (SRT), and adopting a more proportionate approach to disclosure requirements, particularly for private securitizations.

Improving the regulatory framework would not only make securitization more attractive and viable, but would also enable the European economy to mobilize the capital necessary to address its current and future challenges, such as economic recovery and the transition toward a more sustainable economy.

To move forward with the SIU and channel savings into the real economy of the EU, the European Commission announced a set of initiatives on March 19, 2025. One of them was the securitization reform. This strategy acknowledges the important role of securitization in boosting investment by providing a risk-free transfer mechanism for banks to free up capital that can be lent to individuals and businesses, including SMEs.

As part of this strategy, in June 2025, the European Commission started processing a proposal to amend the Securitization Regulation, among other related regulations. This is the most significant reform since the Securitization Regulation was adopted in 2017, introducing measures such as reducing regulatory burdens and facilitating access to financing, especially for SMEs, to revive the EU securitization market through regulatory adjustments.

Among the main proposed changes are the recalibration of prudential requirements in the CRR, the introduction of a new category of "resilient" securitization, and the reduction by at least 35% of the mandatory fields in reporting templates, which results in a significant simplification of transparency and reporting obligations.

Moreover, the homogeneity requirement for SME securitizations has been reduced to a 70% threshold, making it easier for SME portfolios to access the STS framework. The definition of "public securitization" is expanded to include operations admitted to trading on MTFs, which may imply that securitization operations currently treated as private might transition to public status, thus subjecting them to greater transparency obligations. A simplified reporting template is introduced for private securitizations, which requires reporting to securitization repositories, but with restricted access to protect confidentiality.

In terms of due diligence, redundant requirements are eliminated, and a principles-based approach is adopted, allowing investors to focus on the most significant structural aspects. The timeframe for completing due diligence in secondary market transactions is extended and obligations for low-risk transactions are simplified. Also, it clarifies that the delegation of due diligence does not transfer legal responsibility, and exemption is granted where public entities or multilateral development banks guarantee the securitizations.

Finally, the reform provides for the review of risk weight floors and the (p) factor in the CRR Regulation to improve risk-sensitivity and reduce overcapitalization, and it introduces a specific sanctioning regime for non-compliance with due diligence obligations.

Transactions carried out by credit institutions

Securitization is currently being used by credit institutions for two main purposes: on the one hand, as a funding mechanism, and on the other, as a means of freeing up capital.

- **Securitization as a financing mechanism:** This financing is obtained through two methods. In public transactions, funding is raised by selling the bonds on the market. In retained transactions (that is, those in which the originator retains the bonds issued by the securitization fund), funding is obtained by using these bonds as collateral in financing transactions with central banks (carried out primarily with the Eurosystem).
- **Securitization as a mechanism for freeing up capital:** Securitization has proven to be a highly effective tool for credit institutions to free up capital. These transactions, if certain regulatory requirements are met, enable credit institutions to free up capital for securitized exposures. The main premise of this type of transaction is that it must involve a SRT).

Securitization as a vehicle for the purchase of non-performing loans

In the Spanish financial market, securitization has become established as a key mechanism for the management and acquisition of NPLs or sub-performing loan portfolios, which are sold by financial institutions to third parties.

This mechanism allows financial institutions to convert illiquid assets into negotiable financial instruments that are eligible for listing on MTFs, with all the associated benefits, thus facilitating their sale and efficient management.

In Spain, these types of transactions are usually structured through private funds. That is, the asset-backed bonds are not admitted to trading on an official secondary market, and consequently, prior registration and publication of a listing prospectus with the CNMV is not required. Occasionally, consideration is given to the classification of the transaction as STS.

The advantages of this mechanism, as compared to the direct purchase of loans, have been discussed in the section addressing portfolio sales and purchases. Additional benefits for financial institutions, investors, and the financial system as a whole can also be highlighted:

- **Improvement of ratios:** This enables financial institutions to reduce the volume of non-performing assets on their balance sheets, thereby improving their solvency ratios and facilitating compliance with regulatory requirements. The risks and rewards associated with the NPLs rest exclusively with the securitization fund and, ultimately, with the investors who acquire the securities issued.
- **Access to liquidity:** The sale of NPLs through securitization provides institutions with immediate liquidity, which can be used to fund new lending operations or to strengthen their financial position.
- **Risk diversification:** Investors that acquire the securities issued by the securitization fund assume the risk associated with the NPLs; however, this risk is spread among multiple participants, which contributes to greater stability in the financial system.
- **Transparency and standardization:** Securitization is usually accompanied by asset valuation and classification processes, which provide greater transparency and facilitate the assessment of associated risks.
- **Boosting the secondary market:** By facilitating the sale of NPLs, securitization contributes to the creation of a more liquid and efficient secondary market, promoting the recovery of value for these assets.

In summary, securitization has become an essential tool in Spain for managing NPLs, enabling financial institutions to optimize their balance sheets and investors to access new investment opportunities—all within a framework of increased transparency and efficiency. Moreover, these asset-backed bonds can be used as collateral in public securitization transactions placed on the market.

Invoice securitization

In the current economic climate, invoice securitization is becoming increasingly important for companies and is emerging as an innovative alternative to traditional bank financing. The ability to convert illiquid assets into negotiable securities provides companies with an additional option for raising capital, especially in situations where conventional sources of financing may be limited or more expensive.

These types of transactions are usually structured through private funds—whether listed or not on an alternative market—with a limited number of investors. Additionally, given the short-term nature of invoice assets, these are open-ended funds on the asset side, featuring a revolving period during which the proceeds the fund receives from maturing invoices are

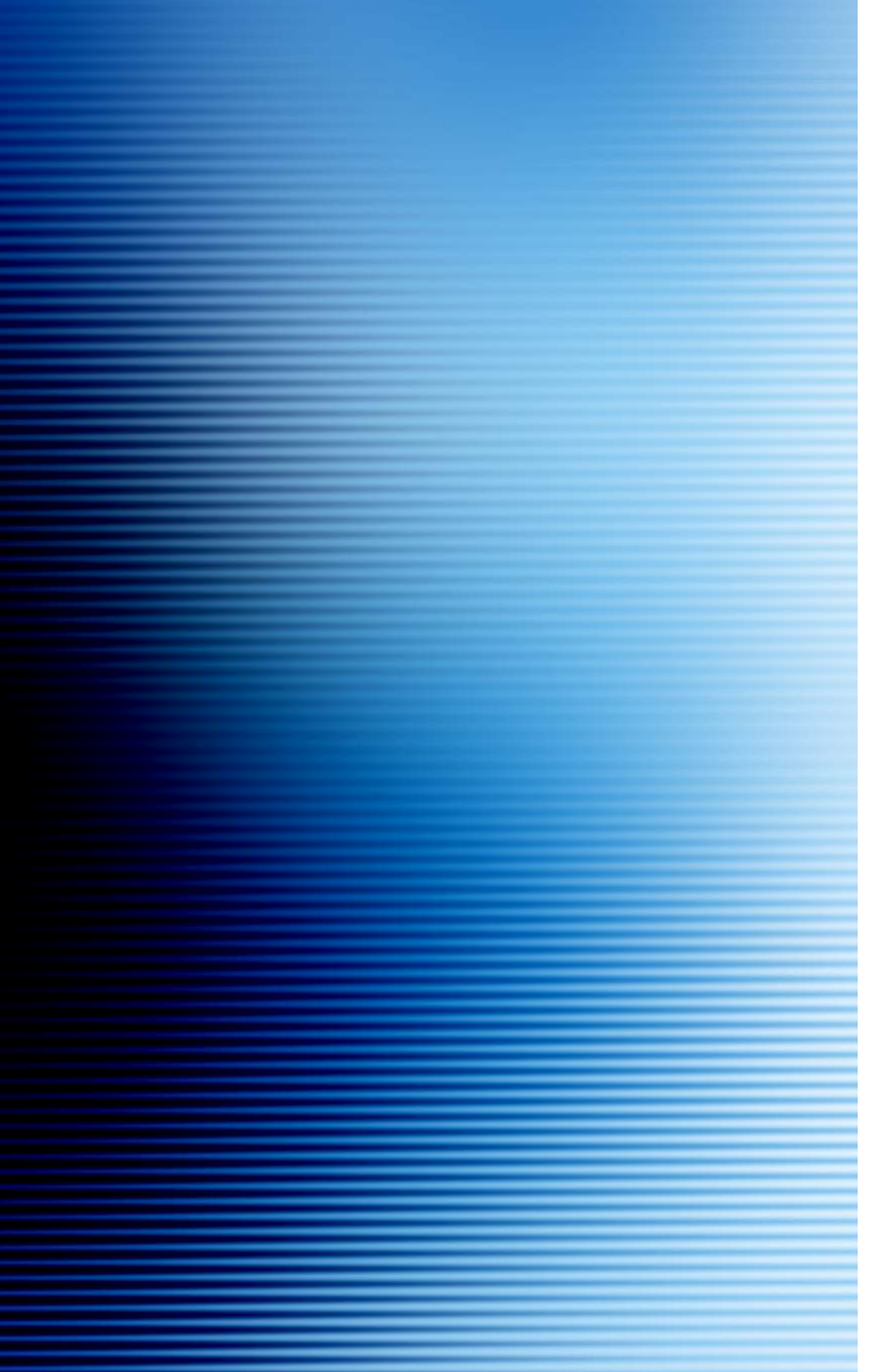
reinvested in the acquisition of new invoices that meet the agreed eligibility criteria, thereby extending the life of the fund by several years. On the liability side, the fund may be either open-ended or closed-ended, and both asset-backed bonds and asset-backed notes are issued.

Green securitization transactions

Green securitization transactions in Europe are currently in a stage of development and consolidation, driven by the above European Green Bond Regulation.

Furthermore, the above regulation establishes for the first time the legal framework applicable to green securitization transactions, detailing the requirements that must be met to qualify as such. These requirements are divided into several key categories. One of these requirements is the use of proceeds. For a securitization to be considered green, the use of the proceeds obtained from the issuance of the asset-backed bond must be consistent with the EU taxonomy. This means that the originator of the bond must invest the proceeds in economic activities that meet the sustainability criteria established in the Taxonomy Regulation.

The European Green Bond Regulation is expected to facilitate the financing of sustainable projects through securitizations, particularly in sectors such as renewable energy and infrastructure. However, to maximize its potential, it will be crucial to expand the scope of the Regulation to include synthetic securitizations and to address the specific characteristics of different asset classes and jurisdictions. The implementation of delegated acts and the development of supervisory practices will also be instrumental factors in overcoming current legal and operational challenges, thereby enabling sustained growth of the green securitization market in Europe.



VII.

FINANCIAL DERIVATIVES

Boom in financial derivatives

Financial derivatives have emerged as an essential tool across various economic sectors. These instruments enable the hedging of risks associated with fluctuations in interest rates (for example, in the context of variable-rate financing transactions), foreign exchange, commodities, and goods, among others.

In structured finance transactions in Spain, it is very common for lending institutions to provide interest rate risk hedging, generally through the arrangement of an interest rate swap (IRS) or, occasionally, a CAP.

This financial instrument will normally benefit from the financing security on a *pari passu* basis. The cash flows generated by the hedging arrangement are also generally collateral for these financings.

Currently, the use of these types of financial instruments to hedge against volatility in the electricity market is particularly noteworthy. This has given rise to virtual or financial PPAs (mentioned above).

On the other hand, European Union regulations have led to the creation of a CO2 emissions allowance market. This market is volatile, so purchasers may be interested in locking in a fixed price and thus being able to enter the market with a hedge. Hedging transactions in this context are beginning to emerge in Spain, primarily involving industrial companies as well as maritime, land, and air transport operators.

Documentation and negotiation of hedging agreements

Except in the case of financial PPAs, the documentation for financial derivatives is usually produced following standardized formats that are regularly updated by the leading associations in the financial sector. In Spain, the standard is known as the "Financial Transactions Master Agreement" (more commonly referred to by its Spanish initials "CMOF"). This standardized agreement is developed by the two most representative national financial sector associations: the Spanish Confederation of Savings Banks (*Confederación Española de Cajas de Ahorro* or CECA) and the Spanish Banking Association (*Asociación Española de Banca* or AEB).

The CMOF is used more extensively than its counterpart in the English-speaking world, the ISDA Master Agreement. Nevertheless, the ISDA standard is gaining popularity in the Spanish market and in multijurisdictional transactions or with hedge providers based abroad. Because it is governed by local law, the CMOF facilitates negotiations due to local financial institutions' familiarity with its structure and its compatibility with structured finance agreement standards. It is also a shorter and simpler standard, and is not updated as frequently as the ISDA. The most recent update of the CMOF was in 2020.

The use of hedging instruments in the context of structured finance warrants a more detailed analysis, as it is in this setting that non-financial entities most frequently utilize these financial instruments. In this area, hedging letters are generally executed only in large-scale syndicated financings, crossborder transactions, or cases where the hedge involves a particular degree of complexity (typically in major debt restructurings). Outside of these scenarios, the terms and conditions of the hedge are coordinated through the financing's term sheet.

It is also necessary to align the bilateral hedging agreements with the financing agreement (often syndicated), ensuring consistency between the two and the proper implementation of the security structure. This requires documenting and negotiating each hedging agreement bilaterally with each hedge provider, which, given the speed at which these transactions are often executed, frequently occurs in parallel with the documentation and negotiation of the financing agreement with the banking syndicate. It also requires coordination and participation in negotiations by various teams within the financial institutions.

The general premise in negotiations is that the terms agreed by the parties in the financing must be accepted by the hedging parties and incorporated into their bilateral documentation. This has an impact particularly with respect to defining the scope of financed entities and guarantors, as well as in clauses governing events of default, set-off, prepayment obligations, and thresholds for litigation or cross-default, among others. Particular care must be taken in

reporting the counterparty's status for the purposes of the EMIR regulation, which will be addressed in greater detail below.

Normally, this alignment of the hedging agreements with the financing is carried out in Schedule I of the CMOF (similar to ISDA's Schedule I), although it is sometimes documented by including additional clauses in the confirmation.

Hedging agreements are usually entered into simultaneously with the financing agreement. However, in some cases, execution of the derivative is postponed based on the disbursement date of the financing.

Hedging agreements (including the confirmation of the derivative) subject to the jurisdiction of Spanish courts are usually executed in the form of a notarial document, which provides an enforceable title.

Financial PPAs

Unlike physical PPAs (mentioned in the section on project finance), virtual or financial PPAs do not involve the sale or physical delivery of electricity. Instead, they consist of the periodic settlement of differences between the agreed fixed price of the energy and the market price.

The current regulatory framework provides significant flexibility for the parties to set the terms of the PPA according to their interests. As a result, it is common for financial PPAs to also be documented through bespoke, highly sophisticated contracts that require an in-depth understanding of the energy market and both national and European regulatory frameworks. Occasionally, the ISDA and CMOF templates are also used.

To promote standardization and reduce negotiation times, ISDA has published a specific confirmation template for virtual PPAs for electricity, which utilizes the "2005 ISDA Commodity Definitions." This template, known as the Financial Power Purchase Agreement (FPPA), was released in December 2024 and represents a significant advancement in long-term energy purchase contracts. The ISDA template covers a wide range of settlement formulas and methods, including swaps, collars, and fixed and percentage discounts relative to the market, which facilitates adaptation to differing needs and market conditions.

EMIR 3 Regulation

The EMIR regulation is the European Union's regulatory framework for derivatives reporting and has a significant impact on hedging agreements.

Recently, Regulation 2024/2987, known as "EMIR 3," introduced new obligations for entities subject to EMIR, including the active account requirement (AAR). This requirement ensures that entities deemed systemically important for the EU clear a percentage of their derivatives through a central counterparty (CCP) established in the EU.

EMIR 3 also introduces changes to the clearing regime, such as new methods for calculating thresholds and exemptions from the central clearing obligation. Moreover, it streamlines authorization processes for CCPs, it updates the concept of intragroup transaction, and it modifies trade reporting templates.

In the context of the development of EMIR 3 and its regulatory technical standards, ESMA is promoting amendments to the clearing thresholds, including adjustments to counterparty classification and quantitative changes to those thresholds. It can therefore be expected that EMIR 3's regulatory technical standards will be amended in the near future.

New reporting regime

The ESMA Guidelines that entered into force in 2024 regarding the reporting that must be submitted to trade repositories under the EMIR regulation are currently being implemented. These Guidelines were published as a result of the amendments introduced by Regulation 2019/834, known as "EMIR-Refit," and further specified by Delegated Regulation (EU) 2022/1855 and Implementing Regulation (EU) 2022/1860, both of which became effective on April 29, 2024.

The Guidelines clear up several uncertainties with respect to the classification of certain contracts as "derivatives" and, therefore, whether there is an obligation to report their execution. They also address other relevant issues in relation to the reporting obligation, such as delegated reporting, the obligation and form of reporting on the different phases of a derivative (entering into, modification and termination), as well as the reporting of the position level (exposure between counterparties) during the life of certain derivatives. The Guidelines also

determine, for derivatives traded on regulated markets and cleared by central counterparties, who is required to report under EMIR.

The CNMV has formally adopted these Guidelines and uses them to supervise reporting obligations. This provides market participants with certainty regarding the criteria to be followed when reporting the execution, modification, and settlement of derivatives.

OUR FINANCE PRACTICE

We have a large team of highly specialized lawyers with ample experience in advising on complex financial transactions.

Our services comprise all types of financial transactions: corporate finance, acquisition finance, structured and project finance, and real estate finance; issuance of fixed-income and structured instruments, as well as other financial instruments; and the design of finance structures and debt refinancings.

We are widely recognized for our expertise in advising on crossborder transactions and multijurisdictional matters, especially in Europe and Latin America.

Our services

Corporate and acquisition finance

Financing of projects and infrastructure (PPP/PFI)

Real estate finance

Asset finance

Portfolio sales and purchases

Direct lending

Debt refinancing

Fixed income and securitization

Market recognition

Chambers AND PARTNERS Legal500 IFLR1000

Leading firm, recognized by the top legal directories in **Banking and Finance, Project Finance, Capital Markets,** and **Debt Restructuring in Spain**.

"*A popular choice for borrowers and financial institutions navigating complex financing transactions across Iberia and Latin America*."

Legal 500, 2025

"*Cuatrecasas has excellent professionals who are always up to date on market trends, which allows them to propose innovative solutions to deals*"

Chambers, 2025

CUATRECASAS: WHAT WE OFFER

Talent
Our multidisciplinary and diverse team is made up of over 1,300 lawyers and 29 nationalities. Our people are our strength and we are committed to inclusion and equality.

Experience
We have a sectoral approach focused on each type of business. With extensive knowledge and experience, we offer our clients the most sophisticated advice, covering ongoing and transactional matters.

Specialization
We offer optimal value thanks to our highly specialized teams made up of lawyers from different practices. Their cross-sectoral approach to our clients' business enables us to offer efficient solutions.

Knowledge and Innovation
We promote an innovation culture applied to legal activity that combines continuous training of our team and adaptation to the latest technological resources, including artificial intelligence.

Responsible business
We incorporate environmental, social and governance ("ESG") criteria into our service provision and in our internal management. See our Corporate Sustainability Report and the main parameters we use to measure our ESG performance.

FT INNOVATIVE LAWYERS
20 YEARS: TOP 10 EUROPEAN LAW FIRM

Most innovative law firm in continental Europe
2005-2025

Chambers AND PARTNERS · IFLR1000 · LATIN LAWYER 250 · Legal500

Recommended in the main areas of law in Europe and Latin America

IFLR AWARDS 2025 EUROPE WINNER

EU Firm of the Year, 2025
National firm of the Year: Portugal, 2025

LACCA

Sixth most popular international law firm in Latin America 2024

KEY CONTACTS

Finance

Íñigo Rubio
Coordinating Partner
inigo.rubio@cuatrecasas.com

Beatriz Causapé
Coordinating Partner
beatriz.causape@cuatrecasas.com

Fernando Bernad
Partner
fernando.bernad@cuatrecasas.com

Héctor Bros
Partner
hector.bros@cuatrecasas.com

Agustín Cerdá
Partner
agustin.cerda@cuatrecasas.com

Cristóbal Cotta
Partner
cristobal.cotta@cuatrecasas.com

Miguel Cruz Ropero
Partner
miguel.cruz@cuatrecasas.com

Manuel Follía
Partner
manuel.follia@cuatrecasas.com

Carlos Lasarte de Launet
Partner
carlos.lasarte@cuatrecasas.com

Íñigo de Luisa
Partner
inigo.deluisa@cuatrecasas.com

Pol Solsona
Partner
pol.solsona@cuatrecasas.com

Tomás Ugalde
Partner
tomas.ugalde@cuatrecasas.com

Mª Carmen Arribillaga
Counsel
mcarmen.arribillaga@cuatrecasas.com

María Lérida
Counsel
maria.lerida@cuatrecasas.com

Fixed income and securitization

Jaime de la Torre
Coordinating Partner
jaime.delatorre@cuatrecasas.com

Miguel Cruz Ropero
Partner
miguel.cruz@cuatrecasas.com

Ana Mª Gamazo
Partner
anamaria.gamazo@cuatrecasas.com

CUATRECASAS