

AMBITIOUS COMMERCIAL MOVES TAKE SPAIN INTO THE 21ST CENTURY

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Finally, an aged system is being overhauled to fit a modern market

It has been 128 years since the Spanish Commercial Code first came into effect, and to date, the Code has remained stuck in the distant past, say lawyers. But a New Code has arrived and is sweeping in its nature. It covers the general rules of businesses and other economic operators offering their products or services to market, the general law of corporations, and the rules of competition and unfair competition, as well as the overall scheme for industrial law.

"The proposal for the New Code has finally been submitted to the Ministry of Justice, after several years of work," explains Rafael Suárez de Lezo, Co-Managing Partner of CMS Albiñana & Suárez de Lezo. "The New Code aims to replace the old 19th Century one, which was scattered across a number of different pieces of legislation, with a single text to better regulate businesses in Spain." Reactions from lawyers have been mixed. Federico Roig, M&A and Corporate Director at Cuatrecasas, Gonçalves Pereira believes the New Code is very ambitious and includes some 1,900

provisions covering the entire spectrum of corporate and commercial laws. "The aim is to have a unique, single code including a full set of rules for all commercial and corporate activities, including public and private corporations and commercial contracts, and there are both positives and negatives to it."

Suárez De Lezo, meanwhile, believes it could be an important piece of legislation. "It is intended to help consolidate the market, as companies are currently subjected to different rules in each region, which is a serious obstacle to the normal conduct of their business," he says. "The New Code seeks to ensure a common and uniform regulatory environment applicable to all Spanish businesses and operators regardless of where their headquarters are located."

The large volume of proposals is still being reviewed by the market, but some key changes are emerging. For instance, the new Code removes the requirement to have an independent expert state if a leveraged merger had any financial assistance issues.

"This has always been difficult to prove because the question of financial assistance is not only an economic, but also a legal, one" Roig points out, "so it was hard for an independent financial expert to issue an opinion".

Other provisions include new shareholder rights whereby they can pass company resolutions in writing rather than in person – avoiding the requirement to organise a meeting to pass resolutions. The old Civil Code for Contract Law will be replaced by a clear set of definitions of what contractual provisions apply if they are not included in a contract – although these are yet to be finalised, while 'squeeze out' rules will be widened– where majority shareholders can 'squeeze out' the remaining shareholders by compensating them.

"Under the old system, there was no 'squeeze out' process except for public-listed companies in certain cases," explains Roig, "and the New Code approves 'squeeze out' rights for all private and public corporations if 90 percent of the share capital and three quarters of the voting rights are held, and if a fair market value (FMV) plus 10 percent is paid as the buy-out price".

The New Code pulls in other legislation covering company rules and structural reorganisations as well as a full set of rules on commercial contracts – the sale and purchase of goods, agreements on distribution, agencies, transport, sponsorships, services, insurance and also banking contracts. It also includes antitrust and unfair competition rules.

The market view is that, rather than large-scale reforms, the New Code will draw together various aspects of commercial law and provide more consistency, and that the main changes will be on technical issues of law including the regulation of new contracts..

The Ministry of Justice has opened a period of public consultation for the New Code with the aim of listening to all market feedback. "After that, the target is to have a final draft submitted to Parliament in early 2014," Suárez de Lezo says. "The New Code is likely to come into force in 2015, the actual impact remains to be seen."