



Questions and Answers on the Regime for Reporting Related Third-Party Transactions as per Chapter VII bis of Title XIV of the Spanish Limited Liability Companies Law (LSC)

15 November 2021

TABLE OF CONTENTS

1. Introduction.....	3
2. Transitional Regime.....	3
3. Aggregation Criteria.....	4
4. Persons linked to the Directors.....	6
5. Thresholds for Individualised Disclosure.....	7
6. Relevant Aggregates of Related-Party Transactions.....	9
7. Disclosure of Related-Party Transactions.....	12
8. Audit Committee's Report.....	14
9. Dividend Distribution and Other Corporate Transactions.....	14
10. Further Considerations.....	15

This document is not regulatory in nature. Its purpose is to communicate to the sector, and specifically to financial market participants, interpretative criteria for the proper implementation of the information obligations that are applicable from 3 July 2021, pursuant to Chapter VII bis of Title XIV of the Spanish Limited Liability Companies Law (LSC). These criteria may be expanded on the basis of supervisory experience, regulatory changes or amendments arising from case law, or common positions adopted by the European Union.

1. Introduction

On 3 May 2021, Law 5/2021 of 12 April entered into force, amending the consolidated text of the Spanish Limited Liability Companies Law (LSC), approved by Royal Legislative Decree 1/2010 of 2 July, along with other financial regulations. Among other new features, the Law introduces, on a systematic basis, specific provisions governing related-party transactions conducted by listed companies, through the addition of a new Chapter VII bis to Title XIV of the LSC, comprising four articles, from 529 vicies to 529 tervicies.

In accordance with Section 3 of the First Transitional Provision of the aforementioned Law 5/2021, the obligations established under the new Chapter VII bis were not applicable until two months following the Law's entry into force, that is, from 3 July 2021.

The above-mentioned law also amended Additional Provision Seven of the LSC, empowering the CNMV, inter alia, to supervise the content of Article 529(21) of the LSC, on the disclosure of information on related-party transactions.

Given that this new regulation introduces significant developments compared to the previous regulatory framework and given that related-party transactions are of great importance for shareholders and other investors to adequately assess and evaluate the financial position and performance of entities, as well as the risks such transactions may entail, it is essential that the information disclosed by listed companies be comparable.

In this context, the CNMV has been issued questions on how to interpret certain requirements on the regime for reporting related-party transactions, pursuant to the aforementioned Article 529(21) of the LSC.

This paper, containing 13 questions and answers, includes the issues received considered most relevant and most widely applied by listed companies, together with the criteria that the CNMV deems most appropriate for their correct interpretation.

2. Transitional Regime

1. Chapter VII bis, titled “Related-party transactions” was added to Title XIV of the LSC, applicable since 3 July 2021. Given that, for the purposes of applying disclosure thresholds, Article 529 tervicies of the LSC stipulates that transactions carried out within the previous twelve months must be considered, does this imply that the twelve months preceding 3 July 2021 should be considered, or should the twelve-month period be counted from 3 July 2021 onwards? That is, whether all transactions carried out in the twelve months immediately preceding the annual calculation must be taken into consideration, even if some of them occurred before the entry into force of the Law.

CNMV Response:

The first Transitional Provision of Law 5/2021 establishes that the obligations arising from the new Chapter VII bis of the LSC shall not apply until two months after the entry into force of the Law, that is, from 3 July 2021. This Chapter includes Article 529 unvicies, which falls under the supervisory jurisdiction of the CNMV and underlines that listed companies must publicly disclose, no later than at the time of their conclusion, certain related-party transactions—specifically, those exceeding 5% of total assets or 2.5% of annual turnover.

Article 529 tervicies of the LSC, which sets out the rules for calculating these percentages, provides that related-party transactions entered into with the same counterparty within the last twelve months shall be aggregated to determine whether the relevant thresholds have been exceeded.

Accordingly, if, as of 3 July 2021, the company carries out a related-party transaction which, on its own, does not trigger a disclosure requirement, in order to determine whether the disclosure threshold has been reached on an aggregate basis, the company must add the amount of that transaction to the amounts of any transactions it has entered into with the same counterparty since 3 July 2021, within the preceding twelve-month period, excluding any transactions entered into prior to that date.

If, as a result of the aforementioned aggregation, any of the quantitative reference thresholds are exceeded, the listed company will be required to comply, in respect of all such transactions, with the transparency regime set out in Article 529 unvicies of the LSC.

3. Aggregation Criteria

2. **What is the meaning of the legal term "same counterparty" referred to in Article 529 of the LSC?**

CNMV Response:

Chapter VII bis of Title XIV of the LSC has adapted the definition of related party to that set forth in the International Financial Reporting Standards (IFRS). Specifically, International Financial Reporting Standard No. 24 includes, within the concept of related parties of a listed company those individuals who do not have a direct relationship with the company but whose inclusion arises from their relationship with another related party. This includes, for example, close relatives of key management board or an entity over which the controlling shareholder of the listed company also exercises control.

Similarly, Section 1 of Article 529 vicies equates transactions carried out with the listed company to those carried out with its subsidiaries, given the unanimity in decision-making. In this regard, the term “counterparty” shall be interpreted, for these purposes, as encompassing not only the related natural or legal person itself but also any entity under its control (i.e., its subsidiaries, as defined in accordance with Article [XXX]).

In such aggregation situations, where the disclosure thresholds are jointly exceeded, it is considered appropriate, depending on materiality, to disclose the details of the main

transactions undertaken by the listed company with each related party included in the aggregation.

3. Once the limit set out in Article 529 unvicies of the LSC has been reached, should only the transaction that meets or exceeds the threshold be disclosed, or should all previous transactions also be disclosed? The question, therefore, is whether, upon reaching the threshold, only the last transaction that caused the threshold to be exceeded must be disclosed, or whether all transactions that contributed to the threshold being reached ought to be disclosed. For example, if the threshold is EUR 100 million and four transactions of EUR 25 million each have been carried out, upon completion of the fourth transaction, should only that fourth transaction be disclosed, or should all four transactions that resulted in the threshold being exceeded be disclosed?

CNMV Response:

Law 5/2021 establishes quantitative thresholds for the public disclosure of related-party transactions, with the aim of striking a reasonable balance between, on the one hand, the proper protection of corporate interests and minority shareholders, and, on the other, the administrative and bureaucratic costs of said measure.

The Law stipulates that once these thresholds have been exceeded, disclosure is required and applies equally to both transactions conducted at a single point in time and those carried out within the preceding twelve months with the same counterparty.

Thus, it is understood that all transactions with the same counterparty conducted within the last 12 months, which, in aggregate, exceed the relevant thresholds, shall be subject to the same disclosure regime as if they had been carried out at a single point in time.

At the latest, by the time of the last transaction, all transactions conducted within the past 12 months must be disclosed. This includes the audit committee report(s) referred to in the regulations, as well as the details of each individual transaction.

Since this disclosure arises from the aggregation of transactions that, individually, do not exceed the statutory thresholds, it constitutes a single disclosure summarising all transactions conducted in the past 12 months. Given that the number of aggregated transactions may be substantial, and that the nature and individual amounts of each transaction may vary, it is not deemed necessary to identify each transaction separately. Instead, transactions may be grouped in the disclosure according to their nature and amount into appropriate subcategories.

4. Must every new related-party transaction be disclosed upon disclosure of a transaction or series of transactions once the threshold set out in Article 529 unvicies has been reached, or does the calculation reset, with no further obligation to disclose until the threshold in Article 529 unvicies is exceeded again? Specifically, if the threshold is set at EUR 100 million and has been exceeded, followed by a disclosure, must every new transaction be disclosed—if it exceeds the threshold either individually or when aggregated with transactions carried out within the past 12 months? Or does the calculation reset, with

disclosure only required only when new transactions (excluding those that contributed to reaching the previous threshold) exceed EUR 100 million, either individually or in total?

CNMV Response:

As outlined in the recitals of Directive 2017/828, the objective of the public disclosure of related-party transactions is to inform shareholders, creditors, employees, and other stakeholders of the potential impact such transactions may have on the company's value. In this context, Article 9c(8) of the Directive requires the aggregation of transactions only where these have not previously been subject to the approval and disclosure requirements set forth in this Article.

Notwithstanding the fact that, in the future, due to supervisory experience, changes in legislation, case law, or common positions at the European Union level, the need to revise this criterion may arise, certain transactions that have already been disclosed because they individually or collectively exceeded the thresholds need not be disclosed again if subsequent transactions occur.

The calculation will then reset, and no new transactions need to be reported until these new transactions, either individually or in aggregate, again exceed the statutory thresholds.

4. Persons linked to the Directors

5. **For the purposes of determining the need to disclose transactions with individuals related to the listed company due to their connection with the company's directors, which rule applies?**

CNMV Response:

Section 1 of Article 529 vices of the LSC explicitly defines what is meant by related-party transactions for the purposes of the obligations under Chapter VII bis. This definition includes transactions carried out by the listed company or its subsidiaries, with directors, shareholders holding 10% or more of the voting rights, those represented on the company's board of directors, or any other persons who should be considered related parties in accordance with the International Financial Reporting Standards (IFRS) adopted by the European Union.

Specifically, IFRS 24 regulates disclosures concerning related parties and establishes which other natural or legal persons should be considered related parties of the listed company. Furthermore, Article 231 of the LSC provides a general definition of persons related to directors for the purposes of the duty of loyalty regime applicable to all companies. However, given the nature of its provisions for listed companies, it is considered that, for the purposes of the disclosure obligation under Article 529 unvices, only the definition of related parties contained in Article [XXX] applies.

5. Thresholds for Individualised Disclosure

6. How should the two thresholds established in section 1 of Article 529 unvicies of the LSC be applied in practice?

CNMV Response:

The two thresholds specified in Section 1 of Article 529 unvicies serve as quantitative references to determine whether the relevant amounts of each transaction exceed either of the two thresholds and must, therefore, be disclosed individually. However, this does not imply that, for the purposes of evaluating each transaction, the impact of the transactions should be limited exclusively to these two amounts.

In accordance with Directive 828/2017, a single threshold could, for example, have been established as a percentage of annual revenue. However, this would not imply that any transaction which does not affect revenue would be excluded from the individual reporting obligation. The same applies to the exception set forth in Section 4(b) of Article 529 duovicies of the LSC, which only considers net annual turnover or revenue as a discriminating criterion. This should not be interpreted to mean that a transaction with a monetary value significantly exceeding 0.5% of revenue meets the delegation requirements simply because it does not have an accounting impact on revenue.

It could also have been set solely as a percentage of assets; however, in asset-intensive companies, such as credit institutions, this would have resulted in an excessively high monetary threshold, potentially excluding relevant transactions that shareholders would have a legitimate interest in being informed about.

Furthermore, had different thresholds been established for different economic sectors, the regulation would have become excessively complex. Consequently, the purpose of the rule is to capture any related-party transaction in which any of its relevant magnitudes or parameters exceed either of the two monetary amounts resulting from the application of the two quantitative thresholds. This does not imply that the only two relevant magnitudes for assessing the significance of a transaction are the value of the assets or the amount of income affected.

It should be noted that Article 9c of the Directive allows the use of “several quantitative indicators based on the impact of the transaction on the financial position, income, assets, capitalisation (including shares), or turnover of the company, or by taking into account the nature of the transaction and the position of the related party.”

Two indicators have been chosen for the sake of simplicity, but this should not imply that other financial impacts are not relevant for the purposes of assessing the obligation to report the transaction.

Thus, the directive itself states in the same Article that, in determining relevant transactions, the following factors shall be taken into account: (a) the influence that information about the transaction may have on the economic decisions of the company's shareholders; and (b) the risk that the transaction entails for the company and its shareholders who are not related parties, including minority shareholders. It is evident that both factors are not solely linked to the amount of assets or income involved in a given related-party transaction.

For example, a significant debt restructuring agreed with a related creditor, where the present value of the reduction exceeds 5% of assets or 2.5% of annual income, may not

affect the listed company's income, annual turnover, or assets, but it should still be disclosed individually.

Another similar case would be the cancellation of a financial debt owed to a related party and the issuance of a new debt under substantially different conditions, where the amount of the new or old debt exceeds 5% of total assets or 2.5% of annual income. Although the transaction does not affect assets or income, it should still be disclosed individually.

A third example would be the sale of a trademark or patent with a book value of zero pounds on the balance sheet, generating a positive result equal to the sale amount, which exceeds 5% of total assets or 2.5% of annual revenue. This transaction should also be disclosed individually, even though the result of the sale of an intangible asset does not form part of the revenue figure, even though the asset has a zero book value.

Excluding transactions that may involve a significant amount, even if they do not affect assets or turnover but do affect other items on the balance sheet or income statement, is not considered to be an appropriate interpretation, nor is it believed to be the intention of the legislator.

In developing this issue, some specific criteria that would be applicable to certain particular transactions are outlined below.

6. Relevant Aggregates of Related-Party Transactions

7. How should the concept of “amount or value” be interpreted for the purposes of disclosure requirements for certain types of related-party transactions?

CNMV Response:

When regulating the approval of related-party transactions, the LSC refers to the "amount or value" of the related-party transaction. When establishing the calculation rules for determining related-party transactions entered into with the same counterparty, it uses the term "value". Furthermore, Article 529 unvicies employs the terms "value or amount of the consideration".

It should be understood that, in general, and for the purposes of assessing the individual reporting obligation, the monetary amount of the consideration for the transaction must be used and, where applicable, its fair value. The calculation of either concept should exclude any expenses associated with the transaction, such as advisory fees, unless the advisors themselves are related parties. Moreover, the value of the transaction at the time of its conclusion must be considered.

However, there are many cases not explicitly covered by the regulations. In this regard, concerning the question of which related-party transactions must be reported individually, it is necessary to identify which amounts or parameters are most relevant for each specific type of transaction, such as, for example: (i) the amount of consideration received or paid, (ii) the book value of the asset or liability transferred or acquired, (iii) its fair value, or (iv) the magnitude of the positive or negative result recorded.

Regarding the information to be disclosed, as already indicated, the concept of “value” or “amount of the consideration” for the transaction is referred to in Section 3 of Article 529 unvicies of the LSC, for the purposes of the information to be provided to the market when a related-party transaction exceeds the materiality thresholds set out in Section 1.

Nonetheless, it is considered that other parameters deemed relevant depending on the specific type of transaction should also be disclosed. Therefore, it should be noted that Section 3(d) of the same article requires the inclusion of " any other information necessary to assess whether the transaction is fair and reasonable from the perspective of the company and shareholders who are not related parties". Consequently, in addition to the minimum content stipulated, it will generally be necessary to include the terms and conditions of the transaction, its book value and, if significantly different, its fair value, whether it has resulted in the recognition of an immediate gain or loss in the profit and loss account, and other relevant details.

Law 5/2021 adopts the definition of related party in the LSC by reference to that contained in the IFRS adopted by the European Union. Therefore, analysing how these transactions should be reflected in the annual accounts, including the disclosures to be included, may serve as an additional interpretative criterion. It should not be overlooked that IFRS establish obligations to disclose information on related-party transactions in the notes to the consolidated annual accounts, beyond merely the amount of the consideration for the transaction.

The criteria to be followed in relation to the disclosure of certain types of particular transactions are analysed below.

7.1 Purchase and Sale Transactions

CNMV Response:

For the purposes of determining whether the transaction should be reported individually, as previously indicated, both the amount of the consideration and the carrying amount of the asset acquired or disposed of, its fair value, or the result generated, are relevant figures.

Thus, the sale of an asset with a carrying amount exceeding 5% of total assets or 2.5% of annual revenue must be reported individually, even if its sale price is below both thresholds. This also applies to any sale result, whether positive or negative, that exceeds either of the two thresholds.

With regard to the breakdown of transactions subject to reporting, it will typically be necessary to report, at least, the amount of the consideration for the transaction, provided it is equivalent to the fair or market value of the transaction. Otherwise, consideration should be given to reporting its fair or market value as well. Similarly, in accordance with Article 529 unvicies(3)(d) of the LSC, any other terms and conditions of the transaction that are necessary to assess whether it is fair and reasonable shall be reported.

7.2 Financial Transactions

Loans:

CNMV Response:

For the calculation of the threshold, under Section 1 of Article 529 unvicies, the amount drawn or the total available (if different) should be considered. The obligation to report individually arises if either of these two amounts exceeds the amount representing 5% of total assets or 2.5% of annual revenue.

Once it has been determined that a transaction must be reported, the information to be disclosed should include the initially drawn amount and the maximum available, along with its basic terms, such as the interest rate, duration, guarantees, etc., that would enable an assessment of whether the transaction is fair and reasonable, in accordance with Section 3(d) of the same article.

Guarantees:

CNMV Response:

For the purposes of determining its reporting obligation, the nominal value of the guarantees received by the company should be considered, or the maximum amount committed by the counterparty that the company could be entitled to receive. Regarding the information to be provided, in accordance with Section 3 of Article 529 unvicies of the LSC, the main terms and conditions should also be broken down, including the interest rate, settlement frequency, maturity date, and transaction fees.

For guarantees provided by the company, even if they differ from the recorded amount, the reference should also be the nominal value of the guarantee, or the maximum amount committed to which the company could be liable at the time of contracting. For those transactions where individual reporting is mandatory, their main terms and conditions must also be disclosed, including the interest rate, settlement frequency, and transaction fees.

Financial Derivatives:

CNMV Response:

Given the variety of financial derivatives, it does not seem appropriate to apply a general automatic criterion. In this regard, their fair value on the contract date, which will generally coincide with the fair value of the consideration given or received, could serve as an initial criterion to be applied in many cases.

However, for certain futures or swaps, the initial fair value is zero, meaning it is not a reasonable indicator of the risk assumed by the counterparties. In such cases, the notional amount could serve as an appropriate indicator, which could be used to determine whether the financial instrument should be reported. Nonetheless, entities may choose to apply another parameter that is deemed to better represent the value of the transaction, such as one based on the volatility of the underlying asset, provided that a reasonable methodology based on best market practices is used.

Additionally, for transactions that must be reported individually, information should be provided on their main terms and conditions, including their notional value and, where applicable, the exercise price, the underlying variable(s), the expiry date, settlement frequency, and transaction fees. Information should also be provided regarding the methodology and inputs applied to determine the value that best represents the transaction, as well as the uncertainty inherent in that estimate.

7.3 Multi-Annual Contracts:

CNMV Response:

Given the diversity of potential contracts within its scope, there is no single solution; rather, professional judgment must be applied to each specific case to assess which magnitudes or parameters are most significant.

However, in many cases, with regard to the provision of services for a fixed term, the total amount that the company will need to pay or will receive under the signed contract should be considered, regardless of its duration. In other words, the calculation should not be based on an 'annualised' basis but rather on 'discounted' terms, reflecting its total present value.

Additionally, for transactions that must be reported individually, information should be provided on their main terms and conditions, including their notional value and, where applicable, the exercise price, the underlying variable(s), the expiry date, settlement frequency, and transaction fees. Information should also be provided on the methodology and inputs used to determine the value that most accurately represents the transaction, as well as the uncertainty surrounding that estimate.

7.4 Unspecified Amount Contracts:

CNMV Response:

For these contracts, the company shall be obliged to determine, to the best of its ability, a reasonable value for the contract.

7.5 Framework Agreements:

CNMV Response:

Framework agreements are typically agreements that establish the terms governing contracts over a set period, particularly with respect to price and, where necessary, the expected quantity, as well as other standard conditions that are known in advance and enable a series of ordinary transactions to be conducted under the protection of the framework agreement.

If the agreement establishes a maximum amount for the transactions to be conducted, and this amount exceeds either of the two thresholds set out in Article 529 unvicies of the LSC, the transaction should be disclosed at the time the framework agreement is concluded. This disclosure should include the corresponding report from the audit committee. If it is considered likely that the maximum amount will be reached, or a lower amount will be reached that still exceeds the thresholds, disclosure is required at the time of the agreement's conclusion. If, at the time of approval, it is deemed unlikely that the thresholds will be exceeded, but this later occurs, then all transactions conducted in the past twelve months must be disclosed at that time.

7. Disclosure of Related-Party Transactions

8. A question arises regarding the term "enter into," which the LSC uses both to specify that transactions must be disclosed "no later than at the time of their conclusion" (Article 529 unvicies), and to define the calculation rules (Article 529 tervicies), which require aggregating all transactions "entered into" with the same counterparty within a one-year period. This raises the question of when the "time of entry into force" should be understood to occur.

CNMV Response:

The moment of execution should be understood as the point at which both parties definitively agree to all the terms and conditions of the transaction, subject to any applicable conditions precedent. If the transaction requires approval from the general meeting of shareholders or the board of directors, the parties may agree to the terms, contingent upon such approval, following a report from the audit committee. In these cases, the contract is considered concluded at the moment when the relevant corporate body approves it, provided all conditions precedent have been satisfied, and the agreement comes into force. If, however, the parties have not signed the contract and it is still pending authorisation by the corporate body, the conclusion occurs at a later date—after the required approval is obtained and both parties sign the contract, thereby committing to its execution.

Thus, the concept of 'conclusion' should be understood as synonymous with the entry into force of the agreement, rather than its actual execution. This aligns with the understanding of the completion of a sale: the sale is finalised when the parties reach an agreement, even in the absence of the delivery of the item (as outlined in Article 1450 of the Spanish Civil Code).

Similarly, for the purposes of Article 529 tervicies, the calculation is based on transactions that have been concluded within the last twelve months, rather than those that have been executed within that period. Consequently, the aggregation of related-party transactions should be based on the date of their conclusion, rather than their execution.

However, for the sake of transparency, it is advisable to include relevant information in the financial statements and in the Annual Corporate Governance Report (ACGR) concerning the execution dates and amounts, particularly when such details are significant or when there have been substantial delays or advancements relative to the initially planned schedule.

The Law does not specify a particular deadline for disclosure, meaning that transactions must be reported immediately after their execution. In cases where approval by the board is required, the date of such approval will be regarded as the date of conclusion.

Therefore, these transactions must be disclosed immediately following board approval.

In cases of approval by the general meeting, if a prior binding agreement with the counterparty already encompasses all its terms and conditions, the date of approval shall be considered the date of conclusion. In such instances, the disclosure obligation is deemed fulfilled with the publication of the meeting notice, which should include the proposed approval on the agenda, together with the audit committee's report. The subsequent publication of the resolutions adopted during the meeting, in accordance with Article 525 of the LSC, will also satisfy the disclosure requirements.

However, if all terms and conditions have not been definitively agreed upon before the approval by the general meeting, the special disclosure regime applies to all related-party transactions exceeding the established thresholds, regardless of the approving body. Therefore, once the general meeting approves the transaction, it must be subject to the disclosure requirements of Article 529 unvicies at the time of its conclusion—that is, when all terms and conditions are subsequently agreed upon. This ensures the provision of relevant information to investors. Nonetheless, if certain details remain unchanged, they may be incorporated by reference to the information previously disclosed when the general meeting was called. In such cases, public communications must clearly state that certain information has been omitted as the board believes its disclosure could be detrimental to the company's interests. Furthermore, the board must confirm that, in their view, such omission does not prevent shareholders from assessing the fairness and reasonableness of the transaction.

8. Audit Committee's Report

9. **Regarding the explanatory report to be issued by the Audit Committee, what happens when disclosing the rationale requires revealing trade secrets or information that could severely harm the company's position?**

CNMV Response:

Article 529 unvicies stipulates that the announcement of a related-party transaction must be accompanied by a report from the Audit Committee. This report assesses whether the transaction is fair and reasonable from the company's perspective and, where applicable, from the standpoint of shareholders who are not related parties. The report must also explain the assumptions on which the assessment is based and the methods used (in accordance with Article 529 duovicies, paragraph 3).

The Law does not provide exceptions that would exempt the disclosure of this report. However, the board may decide not to disclose certain detailed information from the Audit Committee's report if it is deemed that such disclosure could significantly harm the company's interests. In any case, the board must ensure that the report provides sufficient and necessary information to fulfil the requirements of Section 3 of Article 529 unvicies of the LSC. This information should allow shareholders to assess whether the transaction is fair and reasonable, even if certain sensitive details are withheld.

9. Dividend Distribution and Other Corporate Transactions

10. **Consideration of Distributed Dividends. Should dividend distributions be considered for the purposes of the calculation rules in Article 529 tervicies? What about capital reductions with return of contributions?**

CNMV Response:

The LSC establishes a system of approval and transparency for the distribution of dividends. These distributions must be approved by the general meeting of shareholders,

with the proposed resolution from the board of directors included in the meeting agenda, along with the necessary documentation for shareholder approval.

Additionally, dividend distributions are considered a corporate transaction that affects all shareholders equally, as they are distributed in proportion to the number of shares held.

Finally, without prejudice to the ad hoc disclosure required by the LSC from the date of the notice of the general meeting, as well as the obligation to report on this in the notes to the annual accounts, the corporate regime for related-party transactions in the new Chapter VII bis only refers to IAS 24 with regard to the concept of related parties, in line with the provisions of Directive 828/2017. However, it does not extend to the concept of related-party transactions. Consequently, the definition of related-party transactions in accounting regulations may differ from that in corporate law. It is important to note that the legal text was amended during the parliamentary process. The initial draft of the bill included a reference to IAS 24 for defining related-party transactions, but this reference was ultimately not retained in the final version of the law.

Therefore, based on the above arguments, it is concluded that the payment of dividends does not fall under the corporate definition of related-party transactions and should not be subject to the specific requirements of Chapter VII bis of the LSC, as the LSC already provides equivalent regulatory requirements for such transactions. For the same reasons, it is also concluded that dividend payments should not be included in the aggregation rules set out in Section 1 of Article 529 ter of the LSC. This conclusion applies to capital reductions involving the return of contributions.

10. Further Considerations

11. Is Order EHA/3050/2004 considered applicable?

CNMV Response:

Order EHA/3050/2004 is not deemed applicable to any matters that conflicts with more recent legislative provisions enacted subsequent to the Order's publication. Specifically, this applies to the obligations concerning the disclosure of related-party transactions outlined in Section D of the Annual Corporate Governance Report (ACGR). For these obligations, the provisions of Chapter VII bis of Title XIV of the LSC and the relevant provisions of the applicable Circular shall prevail. Furthermore, Order EHA/3050/2004 is considered inapplicable with respect to the disclosures mandated in the half-yearly financial report under Article 119 of the Securities Market Law, as stipulated in the consolidated text of Royal Legislative Decree 4/2015 of 23 October.

12. For listed companies under the control, joint control, or significant influence of any state, regional, or local public sector entity, are they subject to the regime set out in Chapter VII bis of Title XIV of the LSC in relation to transactions carried out with other public sector entities?

CNMV Response:

In line with the new corporate regulations on related-party transactions for listed companies, as established in Chapter VII bis of Title XIV of the LSC, Article 529 vices refers to the IAS adopted by the EU for the purposes of identifying related parties, with IAS 24 being applicable.

According to IAS 24, specifically in its section on Government-related entities, paragraph 25 provides certain exemptions from the general disclosure requirements applicable to other entities.

However, paragraphs 25 to 27 of IAS 24 are not intended to exclude transactions from the definition of related-party transactions simply because a listed entity is under the control, joint control, or significant influence of a public sector entity. Therefore, transactions between such a listed company and other public sector entities are still regarded as related-party transactions and are subject to the disclosure regime set out in Chapter VII bis of Title XIV of the LSC, regardless of the public sector entities involved.

Paragraphs 25 to 27 of IAS 24 do not seek to exclude the aforementioned transactions from its scope or to redefine the concept of related parties. Rather, they provide exemptions for a listed entity that is under the control, joint control, or significant influence of a public sector entity, with regard to certain disclosures related to transactions carried out with other public sector entities. These disclosures are generally required by paragraph 18 of IAS 24.

It is implicitly understood that such transactions remain classified as related-party transactions and therefore fall within the scope of the disclosures outlined in IAS 24. However, due to the unique characteristics of public sector entities, certain exemptions are provided for these related parties and their transactions, particularly concerning the standard disclosure requirements that apply to transactions involving other listed entities.

Clear evidence of the related-party nature of these transactions is found in the fact that, despite being exempt from specific disclosures, entities are still required to provide alternative disclosures in accordance with paragraph 26 of IAS 24. This would not be necessary if such entities were considered unrelated, nor would it be logical if transactions between them fell outside the scope of the standard.

Therefore, transactions carried out by the listed company with other public sector entities, or with entities over which another public sector entity exercises joint control or significant influence, are not excluded from the concept of related-party transactions under IAS 24. As a result, they remain within the scope of the standard. While they are exempt from certain disclosure requirements, they are not exempt from all, and alternative disclosure requirements are established.

Once it is determined that other public sector entities—those with control, joint control, or significant influence over the listed company, as well as entities under state control, joint control, or significant influence—qualify as related parties of the listed company under IAS 24, the scope of the disclosure and approval obligations will be governed by the provisions set out in Chapter VII bis of Title XIV of the LSC.

In this regard, and for the purposes of defining the scope, it is important to consider the Twelfth Additional Provision of the LSC, introduced by Law 5/2021. This provision outlines two key specifics: one concerning the aggregation of transactions by state-owned

commercial companies with the same related party, and the other providing an exemption for certain related-party transactions conducted by listed public sector companies.

The exemption applies specifically to transactions carried out by listed public sector entities with a third party in their capacity as the successful bidder. This applies provided the third party is also considered a related party, as long as the transaction occurs under normal market conditions and follows a public procurement procedure. Such procedures must be subject to publicity and competition, in accordance with public procurement regulations.

This means that transactions conducted by a listed public sector entity with a related party, provided they meet the aforementioned conditions, will be exempt from both the disclosure and approval obligations. However, other related-party transactions carried out by these listed entities—whether with public sector entities or other related parties—will generally remain subject to the disclosure and approval requirements set out in Articles 529 unvicies and 529 duovicies of the LSC.

Additionally, in accordance with Sections 2.a) and 3 of Article 529 vicies of the LSC, transactions between the listed public sector company and its investee companies (whether wholly owned subsidiaries or other investee companies in which no other related party holds an interest) fall outside the scope of Chapter VII bis of the LSC and, therefore, are not subject to the related-party transaction obligations established therein.

13. **A question arises as to whether the exemption from the disclosure and approval regime set out in Articles 529 unvicies and 529 duovicies of the LSC, as provided in Section 3 of the Twelfth Additional Provision of said Act, also applies to related-party transactions carried out by a listed company with a related entity in the public sector, provided that the other conditions specified in the aforementioned Additional Provision are met.**

CNMV Response:

Section 3 of the Twelfth Additional Provision of the LSC states the following:

3. Transactions carried out by public sector entities, under normal market conditions, with a successful tenderer regarded as a related party, following a competitive tendering procedure conducted with due publicity and competition in accordance with public procurement regulations, shall not be subject to the disclosure and approval regime for related-party transactions established in Articles 529 unvicies and 529 duovicies of the LSC.

Although the wording is not entirely clear, the following elements merit particular attention. Firstly, the aforementioned Additional Provision establishes specific features, in terms of rights and obligations, regarding the general regime applicable to public sector entities.

Section 1 establishes an exception to the prohibition on members of the board of directors of a listed company being legal entities, in cases where public sector legal entities join the board of a listed company to represent a portion of the share capital.

Section 2 likewise sets out a specific rule concerning the aggregation of transactions carried out with the same related party in the case of listed state-owned commercial

companies. In other words, both provisions introduce special rules applicable to public sector entities and their corresponding rights and obligations.

Section 3 should be interpreted in the same manner. That is, it governs the special regime applicable to the disclosure and approval of transactions entered into by public sector entities, insofar as they contract with a successful tenderer (irrespective of the identity of the tenderer) provided such contracting is conducted in compliance with the publicity and competition requirements set out in public procurement regulations.

In other words, if a public sector entity is listed and therefore subject to the disclosure and approval regime established under the LSC, such regime would not apply to transactions conducted with a related-party contractor, provided that the requirements of normal market conditions, publicity, and competition are duly met. This is entirely reasonable, as the regime already establishes a detailed procedure for approval and disclosure.

From a disclosure perspective, it would be illogical to extend this exemption to such transactions from the perspective of the successful tenderer, especially if the latter is a listed company.

This would mean that whenever a listed company carries out a transaction regarded as related to any public sector entity (whether listed or unlisted) and such transaction is governed by the publicity and competition regime set out in public procurement regulations, that transaction, from the standpoint of the listed company acting as the successful tenderer, would not be required to comply with the approval obligations established in Article 529 duovicies of the LSC. Consequently, for instance, the transaction could be executed without the prior convening of the listed company's general shareholders' meeting for approval, even where it exceeds the threshold of 10% of consolidated assets, or without the preparation of a report by the audit committee.

From a transparency standpoint, while public procurement regulations ensure a certain level of information is provided to the shareholders of the listed company awarded the contract, these shareholders would not necessarily receive all the information required under Article 529 unvicies of the LSC. For instance, they would not be provided with the Audit Committee's report or, given the differing purpose and intent of the information required under each regulatory framework, any other documentation deemed necessary to assess whether the transaction is fair and reasonable from the standpoint of the listed company and shareholders who are not related parties.