Conference de lancement des OPCI au Maroc

Angel Benito, Consejero de la CNMV
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Monsieur le ministre de l'Economie et des Finances, Madame la Présidente de l'AMMC, le reste des participants à l'événement. Bonjour à tous.

Tout d'abord, je voudrais remercier l'Autorité Marocaine du Marché des Capitaux et, en particulier, Madame Nezha Hayat en tant que Présidente pour l'aimable invitation de la CNMV à participer à ces conférences. L'AMMC et le CNMV ont récemment signé un accord de collaboration entre les deux présidents qui confirme les excellentes relations entre les deux institutions. C'est un plaisir pour moi, en tant que Conseiller, de représenter la CNMV dans cet acte auprès de personnalités du gouvernement marocain, d'institutions et de représentants de marchés. Mon intention est d'expliquer l'expérience espagnole en matière d'agrément et de supervision du secteur des fonds d'investissement immobiliers et d'autres chiffres d'investissement dans le secteur immobilier. Permettez-moi de faire ma présentation en anglais car, comme vous l'avez compris, mon français peut être amélioré.

As I said, I've been invited to speak to you today to explain the Spanish experience in the scope of regulation and supervision of Real Estate Investment Funds.

In that capacity, I want to focus my presentation on three topics related to the ways to invest in real estate in Spain supervised by the CNMV:

1. The first is to describe Spanish legislation and our experience in the field of real estate collective investment vehicles and the lessons learned from the crisis we went through.
2. The second is to describe a particular way of investing through companies listed on the Spanish regulated and alternative markets.
3. The third is to describe other investments in real estate that are taking place through crowdfunding platforms, which are in growth stage and which are under the CNMV´s remit.

1. **Spanish legislation and our experience in the field of real estate collective investment vehicles and the lessons learned from the crisis**

Spanish legislation, mainly Law 35/2003, on Collective Investment Schemes and the Regulation of this Law, both amended on multiple occasions, specifically regulates the category of Real Estate Collective Investment Schemes (CIS), which are defined as non-financial CIS whose main purpose is investment in urban real estate for leasing.

In turn, real estate CIS may take the form of funds (real estate investment funds or FII), which do not have legal personality, or companies (real estate investment companies or SII).

Article 86 of the aforementioned Regulation specifically regulates the categories of real estate in which investments may be made: investments may be made in completed real estate, but also in real estate under construction. Similarly, investment in real estate may be implemented through the acquisition of companies holding real estate, administrative concessions, purchase options and others.

With regard to the nature of the real estate, legislation requires it to be urban, and therefore investment in housing, commercial premises, industrial warehouses, etc. is permitted. In contrast, CIS are not allowed to operate businesses and services attached to the real estate, beyond the lease of the premises.

Another very important feature of the legislation regulating real estate CIS is that relating to the valuation of the real estate, which must be performed by an appraisal company. These appraisal companies are supervised both by the Bank of Spain and by the CNMV with regard to their activities of appraising real estate assets held in the portfolio of real estate CIS. They are subject to special rules for calculating the value of the real estate, referred to as the appraisal value, as well as specific rules that ensure their independence and prevent potential conflicts of interest.

With regard to the portfolio of real estate CIS, the legislation also sets out limits on diversification, limits on liabilities to third parties and minimum ratios for investment in real estate.

Finally, it is important to highlight that real estate investment funds are structured as open-ended collective investment vehicles, which entails the obligation of the fund itself to act as counterparty for the purpose of meeting the redemptions requested by its unit-holders. In contrast, in closed-ended real estate investment companies, this obligation does not exist. This is relevant given that in closed vehicles, if investors wish to dispose of their securities, they must seek out third parties to purchase them.

No provision is made for these two types of non-financial Collective Investment Schemes to be traded on the stock market.

In addition, Spanish legislation provides for another type of vehicle, which is permitted to invest in real estate without any type of limitation: these are closed-ended Collective Investment Entities (EICC), which may be funds (FICC - closed-ended collective investment funds) or companies (SICC - closed-ended collective investment undertakings). As their name indicates, these are closed-ended vehicles, and may only be marketed to professional investors. These collective investment vehicles do not enjoy reduced taxation like real estate CIS.

With regard to the CNMV's supervisory experience relating to real estate CIS, real estate investment funds enjoyed some dissemination among retail investors in the years prior to the financial crisis that originated in 2007-2008. Real estate investment funds went from having assets under management of 1 billion euros in the year 2000 to 9 billion euros in 2007, with a total of 150,000 unit-holders spread over ten real estate investment funds. In fact, there was one real estate fund that had over 50,000 unit-holders and over 3 billion euros of assets under management.

Spanish real estate investment funds mainly invested in housing located in major urban centres for their leasing, and also significant percentages of investment were made in social housing. These funds enjoyed growing subscriptions in the early years of the 21st-century, as well as positive gains (both as a result of the rental returns and the rise in the price of the housing).

However, it was their particular configuration that led to their collapse once the real estate crisis in Spain began. As mentioned above, real estate investment funds were open-ended funds, in which redemptions were met out of the assets managed by the fund. According to applicable legislation, they were required to provide liquidity at least once a year, although in practice, the liquidity windows were more frequent (quarterly or half-yearly).

When the Spanish real estate market entered into crisis, as from 2009, the liquidity windows of the real estate investment funds received avalanches of redemption requests, on occasions greater than 90% of the assets under management. Real estate investment funds therefore found themselves unable to meet the redemptions from their assets under management, as they did not have sufficient liquidity and it was not viable to sell most of their assets within a few days in order to generate the necessary liquidity, given the intrinsically illiquid nature of real estate assets and the greater operational complexity of sales, particularly in comparison with financial assets.

Faced with this situation, in some real estate investment funds (four of them), the financial group to which the manager belonged injected the necessary liquidity into the real estate fund in order to meet the redemptions requested in the liquidity windows.

This injection of liquidity was carried out by means of the subscription of units by one entity in the manager's group, which resulted in the financial group becoming the main unit-holder in the fund.

This situation of injections of liquidity was generally maintained in the following liquidity windows. Unit-holders in these investment funds were therefore able to redeem their units, although at a lower value due to the deterioration of the real estate market.

In the real estate investment funds in which no liquidity was injected, it was decided to suspend redemptions for a period of two years, (two real estate investment funds) meeting 10% of the requested redemptions as required by legislation (the real estate investment funds borrowed in order to meet this 10%).

Once the period of the suspension of redemptions ended, as sales of the real estate assets had been very low (the Spanish real estate market had continued to deteriorate), if the financial group did not inject liquidity into the real estate investment fund, its dissolution and liquidation was agreed. This was also the case in some real estate investment funds in which, after some time, as a result of circumstances particular to the manager's group, the group decided to suspend the injections of liquidity in the liquidity windows.

Therefore, all the real estate investment funds were eventually wound up, including those in which the manager's group had become the sole unit-holder. Following longer or shorter liquidation periods, there are now no "active" real estate investment funds in the CNMV's registers. Real estate investment companies did not undergo this crisis, firstly because they were closed-ended vehicles, and secondly, because their assets under management were heavily concentrated in institutional investors.

Lessons learned

The experience in Spain has demonstrated that investment by open-ended funds in assets that are per se illiquid leads to serious weakening of investor protection in adverse or crisis circumstances.

In financial funds, in which the illiquidity of the assets in which they invest is more variable, the legislation stresses the importance of appropriate liquidity risk management and recognises tools such as stress-testing, swing pricing and sides pockets to address these risks.

In other types of asset, such as real estate assets, the experience with real estate investment funds suggests that it is preferable to structure these investments through close-ended vehicles in which investors obtain liquidity through channels other than that of the counterparty offered by the vehicle itself. One of these channels might be, for example, listing the vehicle on a market in which the supply and demand of the vehicle's securities coincide. This possibility is contemplated in the Moroccan regulation and it is very appropriate.

In Spain, there is another type of investment that is being used by promoters which is indirect investment in real estate assets through funds of real estate funds: in Spain there are hedge funds that are set up as funds of real estate funds.

These funds are mainly aimed at professional or semi-professional investors, and they are also by definition open-ended CIS. They have significant limitations to their liquidity (lock-up periods without the right to redemptions, redemption fees are 50%). In short, although they are open-ended vehicles, in practice they are set up as venture capital or closed-ended vehicles in which all the investors enter at the same time and may redeem their securities once the maturity period of the investments, in this case real estate investments, has ended.

2. **Investments through companies listed on the Spanish regulated and alternative markets (SOCIMIs)**

The aforementioned experience in Spain relating to collective investment in open-ended Real Estate Investment Funds as a result of the financial crisis led to a new category of investment through SOCIMIs, real estate investment listed companies, or Spanish REITs.

These are companies whose corporate purpose consists of holding urban real estate assets for lease or equity stakes in other SOCIMIs.

SOCIMIs are regulated by Law 11/2009, the preamble to which indicates that this category is preferably aimed at small and medium-sized shareholders, making professional investment in real estate assets affordable. Furthermore, with the aim of ensuring investor liquidity, these companies are required to be listed on a regulated market or on a multilateral trading facility, with this requirement being essential for application of a special tax regime.

A special tax regime provided for SOCIMIs consists of:

- SOCIMIs are subject to a Corporate Income Tax ("CIT") rate of 0 percent.
- SOCIMIs' shareholders are subject to ordinary taxes on gross dividends. General withholding tax rules also apply.
- Regarding capital gains, as a result of the sale of SOCIMI shares, shareholders are not exempted from capital gains tax (even CIT payers or non-resident income tax payers).
- SOCIMIs can opt for the application of the SOCIMI tax regime even if legal requirements are not complied with, to the extent these requirements are fully complied with within the following two-year period.

Consequently, SOCIMIs are Spanish-listed companies with the following corporate purposes:

- The acquisition and development of real estate properties of an urban nature for renting (including their refurbishment); and/or
- The holding of equity stakes in another SOCIMI or company with the same corporate purpose and the same dividend distribution policy (i.e. qualifying equity).

Additionally, SOCIMIs should have the following listing requirements:

- A minimum share capital of 5 million euros which must be fully paid-up;
- The shares in a SOCIMI must be listed on either a regulated market or a multilateral trading facility. This listing requirement does not apply during the initial two-year grace period.

There are also some requirements regarding SOCIMI assets and income.

At least 80 percent of the total assets held by a SOCIMI must consist of:

- Urban real estate for lease
- Land for development within a three-year period
- Qualifying equity

At least 80 percent of the income must come from:

- Leases to unrelated parties.
- Dividends from qualifying equity investments.
- Exception: Gains arising from the disposal of qualifying real estate assets and equity instruments are excluded from this ratio, although a three-year minimum holding period applies for these investments.

As to the dividend distribution policy, there are also legal requirements. SOCIMIs must distribute dividends equivalent to:

- 100 percent of the profits arising from qualifying equity investments.
- 50 percent of the gains obtained from the disposal of real estate.
- 80 percent of all other profits.

General rules for listed companies apply to SOCIMIs but there are some differences depending on the type of market where they are listed.

SOCIMIs listed on regulated markets are subject to stricter requirements than the MAB:

- More share´s distribution (free-float). Shareholders owning less than 3 percent of the SOCIMI's share capital must hold a number of shares which is equivalent to 25 percent of the total shares issued by the SOCIMI.
- More supervision by the CNMV (regarding public offerings, financial reports, shareholder agreements, significant holdings, buy-back of shares and takeover bids).
- Stricter thresholds triggering mandatory takeover bid (30% of voting rights of the SOCIMI), significant holdings regime (3% of voting rights, generally) and director transactions with shares (all of them should be disclosed).

SOCIMIs listed on a multilateral trading facility (Spanish MAB) are subject to softer requirements:

- Share´s distribution (free-float). Shareholders owning less than 5 percent of the SOCIMI's share capital must hold a number of shares which is equivalent to or greater than either of the following: an estimated market value of 2 million euros, or 25 percent of the total shares issued by the SOCIMI;
- Disclosure of significant shareholdings: SOCIMIs are obliged to disclose to the MAB any significant acquisitions or disposals of shares that increase holdings to above or below 5 percent (1 percent in the case of directors and senior executives);
- Notification of offering prospectus, shareholder agreements and financial reports only to MAB (not to the public supervisor, CNMV);
- Change of control of the company: any shareholder who receives a purchase offer which would result in the acquirer obtaining control of the company (more than 50 percent) may not accept such an offer unless the potential acquirer makes the same offer to all shareholders.

Market abuse regime is identical for both types of SOCIMIs (insider dealing and market manipulation).

With the aim of supporting SOCIMIs in compliance with the requirement to be listed on a regulated market or MTF, the Alternative Stock Market (MAB) created a new segment for SOCIMIs, which has been in operation since 15 February 2013.

Most listed SOCIMIs are currently traded on the Alternative Stock Market, although there are also SOCIMIs that are listed on the stock exchanges and other foreign markets (Euronext).

In order to be admitted to trading on the Alternative Stock Market, SOCIMIs also need to meet a series of requirements:

- They must appoint a registered adviser and liquidity provider.
- They must have a certain level of shareholder distribution: shareholders owning less than 5 percent of the SOCIMI's share capital must hold a number of shares which is equivalent to or greater than either of the following: an estimated market value of 2 million euros, or 25 percent of the total shares issued by the SOCIMI.
- They must draw up an Information Document for Admission on the MAB and provide an independent expert valuation.

In addition, once admitted, they are, amongst other obligations, required to:

- Comply with market abuse legislation (disclosure of inside information, notification of transactions by managers, drafting of insider lists, etc.).

- Report the purchase or sale of shares that increase holdings to above or below 5% of the share capital, and successive multiples thereof.
- File audited annual accounts and limited reviews of half-yearly accounts.

The SOCIMI segment of the MAB currently includes 67 companies.

- Together they have a total capitalisation of approximately 11 billion euros, with the average capitalisation standing at 160 million euros.
- In 2018, 39 capital increases were performed amounting to 1.06 billion euros. These were mainly carried out for raising funds and converting loans.
- In the short period of time since their creation, this segment is becoming increasingly important.

Four SOCIMIS are listed on the Regulated Market. The four SOCIMIS have a total capitalisation of 10 billion euros at the end of 2018 with the average capitalisation of 2,49 billion euros Their main shareholders are professional and institutional investors that include important financial institutions and hedge funds and whose total assets in 2018 amounted to €25,840,096,000 compared with €24.066.910.000 in 2017, with the following breakdown:

	Total assets		
SOCIMI	**2018**	**2017**	**18vs17**
MERLIN PROPERTIES SOCIMI S.A	12,572,697,000	12,005,039,000	5%
INMBOLIARIA COLONIAL SOCIMI S.A	11,487,314,000	10,507,519,000	9%
LAR ESPAÑA REAL ESTATE, SOCIMI, S.A	1,681,603,000	1,554,352,000	8%
ARIMA REAL ESTATE SOCIMI, S.A	98,482,000		

3. Other real estate investment taking place through crowdfunding platforms

Finally, the activity of Crowdfunding Platforms is regulated in Spain by means of Law 5/2015, of 27 April, on the promotion of business funding. This legislation emerged with the aim of encouraging small and medium-sized enterprises (SMEs) to make use of alternative sources of funding to bank lending.

In Spain, crowdfunding platforms are companies whose activity consists of placing in contact, in a professional manner and using websites or other electronic means, a plurality of natural or legal persons that offer funding in exchange for a monetary return. The crowdfunding projects may be structured through the issuance of bonds, shares and loans, including equity loans.

The funding that a promoter obtains through a crowdfunding platform must be allocated to a project that is of one of the following three types: business, educational or consumer.

In this regard, projects within the real estate sector are eligible projects for a crowdfunding platform. However, it will be necessary to take into account the position assumed by the platform with regard to a specific project as the legislation places special emphasis on the neutrality of the crowdfunding platform. This means that the platform may not perform additional activities with regard to the project, such as: management of real estate assets, property administration or advisory services for development of the project.

To date, of the 69 entities that have submitted crowdfunding platform projects to the CNMV, 19 were real estate projects. Of the 28 there are currently registered with the CNMV, six specifically work in the real estate sector, although it is possible that other generalist platforms are publishing some real estate projects on their website.

In quantitative terms, real estate platforms brokered funding in 2018 in an amount of 35 million euros, accounting for 33.49% of the total funds raised through Spanish crowdfunding platforms.

However, if we consider the cumulative data from registration of the first real estate platform in 2017 up to December 2018, the amount would total 50 million euros, accounting for 30% of the total funds raised through crowdfunding platforms in recent years.