



REPORT
BY THE BOARD OF DIRECTORS OF
FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A. REGARDING THE
AMENDMENT OF THE REGULATIONS OF THE BOARD

04 May 2016

REPORT OF THE BOARD OF DIRECTORS OF FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A. ON THE AMENDMENT OF THE REGULATIONS OF THE BOARD

1. INTRODUCTION AND PURPOSE OF THE REPORT

The Capital Companies Act, approved by Royal Legislative Decree 1/2020 of 2 July was amended in 2015 by Law 31/2014 on 3 December, amending the Capital Companies Act to improve corporate governance, that modified various aspects of the system of capital companies, essentially relating to the General Shareholders' Meeting and the Board of Directors, especially in the field of listed companies.

Furthermore, the Ordinary General Meeting of Fomento de Construcciones y Contratas, S.A. ("**FCC**" or the "**Company**") held on 25 June 2015 approved certain amendments to the Articles of Incorporation in relation to the structure and system of operation of the Board of Directors and its Committees. Accordingly, following the reform of the Capital Companies Act ("**CCA**") by Law 31/2014 of 3 December and the amendments to the Articles of Incorporation approved by the Ordinary General Meeting of FCC on 25 June 2015, a revision of the Regulations of the Board of Directors of the Company became necessary.

In light of this, the Board of Directors of the Company, at its meeting held on 07 October 2015 carried out an in-depth review of the Regulations so that, as well as what is stated above, it could complete or make technical improvements to or better wording of the Regulations, approving the amendments that are listed in this Report.

The Board of Directors has prepared this Report with the aim of explaining:

- (i) **the amendments to articles** 1 (Purpose), 2 (Area of application and dissemination), 3 (Interpretation), 4 (Modification), 5 (Quantitative composition), 6 (Qualitative composition), 7 (Competences of the Board of Directors. List of matters that cannot be delegated), 8 (general functions. Equilibrium in the performance of functions), 10 (Specific functions relating to the Financial Statements and the Management Report), 11 (Specific functions relating to the Securities Market), 13 (Information for shareholders on the occasion of the General Meetings), 15 (Relations with the Auditors), 16 (Appointment, ratification or re-election of Directors), 18 (Duration of the position), 19 (Re-

election of Directors), 20 (Removal of Directors), 22 (General obligations of Directors), 29 (Director's duty of information), 30 (Powers to inform and inspect), 31 (Expert assistance), 32 (Remuneration of Directors), 33 (Responsibilities of the Directors), 34 (Chairman. Duties), 35 (Vice-Chairmen. CEOs), 36 (Secretary of the Board. Duties. Deputy Secretary of the Board), 38 (Meetings of the Board of Directors), 39 (Of the Committees of the Board of Directors), 40 (The Executive Committee), 41 (Audit and Control Committee), 42 (Appointments and Remuneration Committee), 43 (Strategy Committee), 44 (FCC corporate website) and 45 (Content of the corporate website);

(ii) the **elimination of articles** 17 (Designation of Independent directors), 21 (Character of the Board resolutions on this matter), 23 (Directors' duty of confidentiality), 24 (Non-competition obligations), 25 (Conflicts of interest), 26 (Use of FCC's information), 27 (Business opportunities. Use of company assets), 28 (Indirect transactions) and of the Sole Transitional Provision; as well as

(iii) the **inclusion of the new articles** 21 (Duty of diligence), 22 (Duty of loyalty), 23 (Conflict of interest) and 24 (Transactions with significant shareholders).

2. JUSTIFICATION OF THE PROPOSED AMENDMENTS

To facilitate understanding of the amendments to the Regulations of the Board of Directors, the numbering and titles of the articles referred to below correspond to the new numbering of the Regulations following their approval.

a) **Amendments derived from the reforms to the Capital Companies Act:**

The entry into force of Law 31/2014 of 3 December, modifying the Capital Companies Act to improve corporate governance has added certain modifications relating to the operation of the Board of Directors and the legal status of its members and, along with other amendments, the amendments to the Regulations of the Board of Directors regarding the following matters fall within this field:

- With relation to the **composition, competences and operation of the Board of Directors:**

- The different types of Director are included as is the Board's obligation to ensure diversity in the selection procedures (article 6 Regulations of the Board of Directors).
 - The list of non-delegatable competences of the Board of Directors is included (articles 7 and 8 Regulations of the Board of Directors).
 - The period in which shareholders can request information or clarifications from the Board on the occasion of the Meeting is expanded until the fifth day before the Meeting is held (article 13 Regulations of the Board of Directors).
 - The duties of the Chairman and of the Secretary of the Board are specified, as well as the need for a report prior to the Appointments and Remuneration Committee for the appointment and removal of the Chairman, the Vice-Chairman and the Secretary and Vice-Secretary of the Board (articles 30, 31 and 32 Regulations of the Board of Directors).
 - The provisions relating to the obligation to have an Audit and Control Committee and an Appointments and Remuneration Committee, bringing their composition and duties in line with the CCA, and establishing a given number of members of them (articles 37 and 38 Regulations of the Board of Directors).
- Regarding the **appointment and re-election of Directors**, the requirement is included for the appointment of Independent Directors to be preceded by the proposal of the Appointments and Remuneration Committee, as well as a justifying report by the Board of Directors regarding the appointment of any Director (article 16 Regulations of the Board of Directors).
 - Regarding the **duration of the position of Director**, the uniqueness of the vacancies occurring once the General Meeting has been called is included (article 17 Regulations of the Board of Directors).
 - Regarding the **duties of the Directors**, the regulation of articles 225 to 230 of the CCA is included, in particular relating to the duty of diligence, the duty of loyalty and the imperativeness and exemption of duties system (articles 20 to 26 Regulations of the Board of Directors).
 - Regarding the **remuneration of the Directors**, amongst others, the provisions of the CCA Act regarding the obligation to execute a contract with the Executive

Directors and that of approving the remuneration policy of the Directors at least every three years are included, as well as the obligation to approve annually a Directors' Remuneration Report (article 28 Regulations of the Board of Directors).

- As for the **system of responsibility of the Directors**, article 29 of the Regulations is amended to include the new provisions of articles 236 and 237 of the CCA.
- Regarding **the meetings of the Board of Directors**, the following provisions are included in article 34 of the Regulations:
 - The need for the Board to meet quarterly.
 - The obligation for the Directors to have all necessary information previously and with sufficient time ahead of the meeting (except in urgent cases).
 - The prohibition on Non-Executive Directors delegating their representation to an Executive Director is established.
 - In relation to the evaluation of the Board, the need to draw up an action plan to correct any deficiencies that are detected is included.
 - The enhanced majorities laid down in the CCA are included.

b) Other amendments relating to the system of structure and operation of the Board and its Committees:

Regarding the system of composition and operation of the Board of Directors and its Committees, various amendments have been introduced with the main aim of coordinating the provisions of the Regulations and the amendments to the Articles of Incorporation approved at the Ordinary General Meeting of 25 June 2015 as a result of which the following areas of the Regulations, amongst others, were modified:

- The articles were modified that relate to the composition of the Board of Directors (articles 5 and 6 Regulations of the Board of Directors) for the purpose of setting the number of members of the Board at twelve, eliminating the requirements for proportionality of the different categories of Directors and including more detailed Regulations regarding the Independent Directors.

- The provision requiring the Company to have a single CEO (articles 7 and 31 Regulations of the Board of Directors) was included, as well as the requirement for the Chairman of the Board of Directors not to have executive duties (articles 10 and 30 Regulations of the Board of Directors).
- As well as those set out in the CCA, certain non-delegatable competences of the Board of Directors were included (article 7 Regulations of the Board of Directors).
- Certain requirements regarding the composition of the Audit and Control Committee and the Appointments and Remuneration Committee were included in articles 37 and 38 of the Regulations.

c) Technical improvements and improved wording:

Finally, some technical or wording improvements were included in relation to particular matters:

- This field includes, amongst others, articles 1 to 4 regarding the Purpose, Area of application and dissemination, Interpretation and Modification of the Regulations; article 6 regarding the qualitative composition of the Board; the articles relating to the functions of the Board of Directors (articles 10 and 11); article 13 relating to the information for shareholders on the occasion of the General Meetings; article 15 ("Relations with the Auditors"); the articles regarding the appointment, re-election, ratification and removal of Directors (articles 16, 18 and 19); articles 25 to 27 of the Regulations regarding the duties and power to inform of the Director and expert assistance; article 31 regarding the Vice-Chairmen and the CEO and article 32 regarding the Secretary; article 34 regarding the meetings of the Board of Directors; the articles regarding the Committees of the Board of Directors and, in particular, articles 35 ("Of the Committees of the Board of Directors"), 36 ("The Executive Committee"), 37 ("Audit and Control Committee"), 38 ("Appointments and Remuneration Committee") and 39 ("Strategy Committee"); and articles 40 and 41 regarding the corporate website of FCC and its content.



3. APPENDIX

The comparative text of the Regulations of the Board of Directors in force and the version amended since the last General Meeting is attached as an **Appendix** to this Report.