



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

28 June 2023

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I. INTRODUCTION AND PURPOSE OF THE REPORT

Article 242 of the revised text of the Capital Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July (the "**Capital Companies Act**"), establishes that the Articles of Association shall set the number of members of the Board of Directors or the maximum and minimum, in which case the General Meeting of Shareholders shall determine the specific number of its members.

In accordance with the foregoing, the Articles of Association of FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A. (the "**Company**" or "**FCC**") state in article 28 ("Composition") that its Board of Directors shall be composed of a minimum of nine (9) and a maximum of fifteen (15) members, with the General Shareholders' Meeting determining the specific number of its members within the aforementioned minimum and maximum. For these purposes, FCC complies with Recommendation 13 of the Good Governance Code of Listed Companies, which recommends having a Board of Directors of between five (5) and fifteen (15) members in order to achieve an efficient and participatory operation.

In this regard, as a result of the resolution of the Ordinary General Meeting of the Company held on 2 June 2020 which set the number of members of the Board of Directors at fourteen (14), within the minimum and maximum number determined in the Articles of Association, the Board amended article 5 ("Quantitative composition") of its Regulations establishing that the Board of Directors shall have (14) members.

Likewise, the Ordinary General Meeting of the Company held on 14 June 2023, as a consequence of the resolutions on the appointment and re-election of directors, approved the following resolutions: (i) within the minimum and maximum number determined in the Articles of Association, to set the number of members of the Board of Directors of the Company at twelve (12); and (ii) to amend article 28.3 of the Articles of Association to remove the requirement that the Board must have three independent directors and that an external adviser must necessarily participate in the selection process.

In this context, on 14 June 2023, the Board of Directors amended its Regulations, following a proposal by the Audit and Control Committee, in order to coordinate them with the Articles of Association and with the aforementioned resolutions adopted by the General Meeting.

In view of the foregoing, the Board of Directors, in compliance with the provisions of articles 518.d) and 528 of the Capital Companies Act and 9.c) of the Regulations of the

General Meeting of the Company, prepares this Report justifying the amendment of **articles 5 ("Quantitative Composition") and 6 ("Qualitative Composition. Categories of Directors")** of the Regulations of the Board of Directors, making it available to the shareholders from the publication of the announcement of the call to meeting.

II. JUSTIFICATION FOR AMENDMENTS TO THE REGULATION

The Board of Directors, at its meeting of 14 June 2023, amended the following two articles of its Rules of Procedure:

- **Amendment of Article 5 ("Quantitative composition").**

The wording of Article 5 was amended by omitting the specific number of Board members, in order to avoid the need to amend the Board of Directors' Regulations whenever the General Meeting fixes a different number of Board members.

In accordance with the above, Article 5 is now worded as follows:

"Article 5. Quantitative composition

~~*The Board of Directors shall have fourteen (14) members.*~~

1. The Board of Directors shall consist of such number of Directors as may be determined by the General Meeting within the limits set by the Company's Articles of Association.

2. The Board shall propose to the General Meeting the number of directors which, in accordance with the circumstances of the company at any given time, is most appropriate to ensure due representation and the efficient functioning of the body, without prejudice, in any case, to the shareholders' right to proportional representation.

- **Amendment of Article 6 ("Qualitative composition. Categories of Directors").**

Article 6(1) and (5) were amended to the effect that:

- To provide that the Board "*shall have the number of independent directors deemed most appropriate from time to time*", so that it may be made up of the categories of directors and the number of directors deemed most appropriate from time to time for the efficient functioning of the administrative body.
- Give full freedom to the Company's Appointments and Remuneration Committee so that, in accordance with the best practices and recommendations of good corporate governance, it may establish the systems and procedures for the selection of directors that it deems most appropriate at any given time and, in this regard, it may be advised by an external expert when deemed appropriate.

In accordance with the above, Article 6 is now worded as follows:

"Article 6. Qualitative composition. Categories of Directors

1. *In addition to the conditions required by law and the Articles of Association, persons appointed as Directors must meet the requirements of these Regulations, formally undertaking on taking office to comply with the obligations and duties set forth herein. ~~Without prejudice to the shareholders' right to proportional representation, the Board of Directors shall comprise at least three independent Directors and eight proprietary Directors.~~*

2. *Directors shall be classified as executive or non-executive, distinguishing between proprietary, independent or other external directors, in accordance with the relevant legal provisions:*

a) *Independent directors, those who, appointed on the basis of their personal and professional qualifications, may perform their duties without being conditioned by relationships with the Company or its Group, its significant shareholders or its executives.*

Under no circumstances may independent directors be appointed if they are in any of the following situations:

(i) Have been employees or executive directors of FCC Group companies, unless three (3) or five (5) years have elapsed, respectively, since the end of that relationship.

(ii) Receive from the Company or its Group any amount or benefit other than Director's remuneration, unless it is not significant for the Director.

For the purposes of the provisions of this section, neither dividends nor pension supplements received by the Director by reason of his previous professional or employment relationship shall be taken into account, provided that such supplements are unconditional and, consequently, FCC or the Group company paying them may not, at its discretion, suspend, modify or revoke their accrual, without breach of obligations, suspend, modify or revoke their accrual.

(iii) Are, or have been during the last three (3) years, partners of the external auditor or the person responsible for the audit report, whether it concerns the audit during that period of FCC or of any other company of the Group.

(iv) Are executive directors or senior managers of another company in which an executive director or senior manager of the FCC Group is an external director.

(v) Maintain, or have maintained during the last year, a significant business relationship with FCC or with any company in its Group, either in their own name or as a significant shareholder, Director or senior manager of an entity that maintains or has maintained such a relationship.

Business relationships shall be considered to be that of a supplier of goods or services, including financial services, and of an adviser or consultant.

(vi) Are significant shareholders, executive directors or senior managers of an entity that receives, or has received during the last three (3) years, donations from FCC or another Group company.

Those who are merely trustees of a foundation receiving donations shall not be deemed to be covered by this paragraph.

(vii) Are spouses, persons linked by an analogous relationship or relatives up to the second degree of an executive Director or senior manager of the Company.

(viii) Have not been proposed, either for appointment or renewal, by the Appointments and Remuneration Committee.

(ix) Have been Directors for a continuous period of more than twelve (12) years.

(x) Are, with respect to any significant shareholder or shareholder represented on the Board, in any of the situations indicated in sections (i), (v), (vi) or (vii) of this point. In the case of the kinship relationship indicated in letter (vii), the limitation shall apply not only to the shareholder, but also to his proprietary directors in the investee company.

Proprietary directors who lose such status as a result of the sale of their shareholding by the shareholder they represented may only be re-elected as independent directors when the shareholder they represented until that time has sold all of its shares in FCC.

A director who holds a shareholding in FCC may have the status of independent director, provided that he satisfies all the conditions set forth in this letter and, in addition, his shareholding is not significant.

b) Proprietary directors:

(i) those who hold a shareholding greater than or equal to that legally considered as significant or who have been designated as

shareholders, even if their shareholding does not reach that amount, as well as

(ii) those representing shareholders referred to in (i) above.

c) Executive Directors, those who perform management functions in FCC or its Group, regardless of the legal relationship they maintain with it. However, Directors who are senior executives or Directors of companies belonging to the group of the Company's parent company shall be considered proprietary Directors in the Company.

When a Director performs management functions and, at the same time, is or represents a significant shareholder or is represented on the Board of Directors of FCC, he/she shall be considered an executive.

d) Other directors, those non-executive directors who cannot be considered proprietary or independent, explaining this circumstance in the Annual Corporate Governance Report and, if applicable, the links of such directors with the company, its executives or its shareholders.

3. The category of each Director shall be explained by the Board before the General Meeting of Shareholders which is to make or ratify his appointment, and shall be confirmed or, as the case may be, reviewed annually in the Annual Corporate Governance Report, after verification by the Appointments and Remuneration Committee, explaining in addition, in the case of external Directors who cannot be considered proprietary or independent, the reasons for such circumstance and their links, either with the Company or its executives, or with its shareholders. Likewise, the Annual Corporate Governance Report shall explain the reasons for the appointment of proprietary directors at the request of shareholders whose shareholding is less than that legally considered significant, and shall state the reasons why, where appropriate, formal requests for presence on the Board from shareholders whose shareholding is equal to or greater than that of others at whose request proprietary directors have been appointed have not been met.

4. The Board of Directors shall ensure that the procedures for the selection of its members favour diversity with respect to issues such as age, gender, disability or professional training and experience and do not suffer from implicit biases that could imply any discrimination and, in particular, that they facilitate the selection of female directors in a number that allows for a balanced presence of women and men.

*5. In particular, the Board of Directors shall have ~~at least three~~ independent Directors, the **number of whom shall be** chosen by the General Meeting on the basis of the application of criteria of rigorous professionalism and full independence, and who shall be proposed for election by the Appointments and*

~~Remuneration Committee following a prior proposal. The latter, in turn, must act in its selection process in accordance with the profile of the director that the company seeks and with the aim of satisfying the requirements of professionalism and independence demanded at all times by law and by good corporate governance practices. The candidates selected shall be proposed to the Board of Directors and by the latter to the General Meeting of Shareholders, unless vacancies are filled directly by cooptation.~~
