

Private Banking: a growing sector

The Private Banking Sector in Spain is a growing sector. The number of potential clients for Private Banking services has boosted as the result of the increase in the standard of living and wealth of the Spaniards, as well as the growth in their financial knowledge

The Private Banking sector still has potential for growth in Spain, and is a segment of the market which has developed considerably over recent years as a result of the increase in the financial capacity and financial awareness of the Spanish people.

Private Banks are characterised by the fact that their business does not consist of the sale of traditional banking and investment products, but rather their activity centres on the provision of financial services on an individual scale to a segment of the population with high levels of income and specific needs for investment.

The two principal services which are, in general, offered by this type of entity are:

- ◆ Management of investment portfolios on a discretionary, client by client basis, and
- ◆ Investment advisory

The most usual vehicles through which Private Banking is carried out are, for tax reasons, SICAVs and, in recent years, Venture Capital Entities.

Companies which operate in the field of Private Banking in Spain

In Spain, up until the transposition of the MiFID, which was completed in the year 2008, investment advisory was not in itself considered to be an investment service but an auxiliary activity, and it could be offered by companies without a licence from the Spanish Securities Market Commission (*Comisión Nacional del Mercado de Valores* or "CNMV") or the Bank of Spain.

Both the discretionary management of portfolios and, following the reform of the Securities Market Law adapting it to the MiFID Directive, investment advisory constitute investment activities, and therefore may only be carried out by investment service companies or

banks which have been authorised to provide such services.

Private Banking services in the Spanish market are offered by the following types of company:

A) Credit Institutions

Private Banks established in Madrid generally act independently and quite autonomously in their business, although they benefit from the synergies with their parent company when offering products and services to their clients. More specifically, within the banking sector, the following business models exist:

- ◆ Specific independent entities within a major finance group: Specific Private Banks which, while they do belong to a finance group, carry on their business independently of the group. For example: Banif - Santander, Popular Banca Privada - Popular or Altae - Caja Madrid.
- ◆ Internal units which specialise in Private Banking within a bank, and which are dependent on the parent company. For example: Bankinter, La Caixa, or BBVA Patrimonios.
- ◆ Traditional banks, insofar as they handle the great majority of their clients' portfolios, also provide this type of service for their higher net worth clients.
- ◆ Banks which focus their business principally on Private Banking, such as, for example, JP Morgan, UBS or Credit Suisse.

B) Investment Firms

The various types of Investment Firms which are able to provide Private Banking services are:

- ◆ Broker-dealers and Brokers: Both entities may be authorised for discretionary portfolio management and for the provision of investment advice.

- ◆ **Portfolio Management Firms:** Such entities may only be authorised to carry out discretionary portfolio management.
- ◆ **Multi-entity Companies:** There are more and more groups which include a Collective Investment Institutions Management Companies, a Broker or Broker-dealer, and some type of Venture Capital Fund under a unified management to meet the requirements of Private Banking in all its aspects (Nmas1, AYG..).
- ◆ **Investment Advice Firms:** This is a new type of entity introduced with the most recent reform of the Securities Market Law adapting it to the MiFID Directive. They may only be authorised for the provision of investment advice.

Incorporation of Private Banking Companies in Madrid

The legislation governing the two principal services of Private Banking, discretionary portfolio management and investment advice, is legislation which is harmonised at a European level, and therefore both Investment Firms and banks which are authorised in one Member State of the European Union (EU) can carry out the same services in Spain under the aegis of the EU passport system (by establishing a branch or by freedom of services).

The entities of countries which are not members of the EU do not enjoy the benefits of the EU passport, and therefore they need to obtain prior authorisation from the Bank of Spain or from the CNMV if they are to operate in Spain using branches.

Furthermore, such entities may obtain authorisation from the Bank of Spain to operate under the freedom of services system, although in these cases, since they are Credit Institutions, they will not be allowed to raise funds from the general public.

Since the transposition of the MiFID Directive, Investment Firms may offer their services or carry out Private Banking activities in Spain using tied agents.

A further option is to create an investment services company or a Credit Institution in Spain, and once authorised, this may move freely around the other countries of the Union.

Market overview

The Private Banking services market in Spain has developed considerably over recent years and its principal characteristics are as follows:

- ◆ The establishment in Spain of Private Banking units of foreign banks and foreign entities which specialise in such services. Madrid has for the most part been the city in which the branches or main offices of such entities have been set up.
- ◆ Development of the market since the initial domination by banks: At first, given the overwhelming influence of the banking sector in Spain, the services inherent in Private Banking were virtually monopolised by the major banks, but over recent years, the number of independent entities specialising in these services has increased.
- ◆ An increase in the number of potential clients in Spain and a change in the client profile: In Spain, the standard of living has improved over recent years, and Private Banking clients are more numerous and more financially aggressive. There is still a potential market of clients who have still not been won over to the specialist services offered by Private Banking, and this means that the sector still has a way to go.
- ◆ A trend can be seen towards greater mobility among the clients of this type of service. Clients have greater and greater financial sophistication, and are more demanding and more difficult to keep loyal.

Useful Contacts:

Bank of Spain (Banco de España): www.bde.es

AEB: www.aebanca.es

CECA: www.ceca.es

Principal relevant legislation:

- ◆ Law 26/1988, of 29 July. Discipline and Regulation of Credit Institutions.
- ◆ Royal Decree 1245/1995, of 14 July. Creation of banks, cross-border activity, and other questions relating to the law applicable to Credit Institutions
- ◆ Circular 6/2002, of 20 December, of the Bank of Spain. Credit Institutions Information about Agents of Credit Institutions and Agreements subscribed for the habitual provision of financial services.
- ◆ Circular 6/2001, of 29 October, of the Bank of Spain. Owners of foreign exchange establishments
- ◆ Royal Decree 2660/1998, of 14 December. Foreign exchange in establishments open to the general public other than Credit Institutions.
- ◆ Law 24/1988 of 28 July, on the Securities Market
- ◆ Royal Decree 217/2008, of 15 February, on the legal status of Investment Firms.