

**APPLICATION FOR AUTHORISATION OF THE PUBLIC TENDER OFFER FOR THE REDUCTION OF CAPITAL THROUGH THE ACQUISITION OF OWN SHARES MADE BY FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A.**

*This application for authorisation is made public pursuant to the provisions of article 17 of Royal Decree 1066/2007, of 27 July 2007, and refers to an offer that is subject to the mandatory authorisation of Spanish Securities Market Commission (Comisión Nacional del Mercado de Valores) (CNMV).*

*The detailed terms and conditions of the offer will be contained in the prospectus that will be published after obtaining the aforementioned authorisation.*

*This application for authorisation shall be deemed to be the announcement of the offer for all purposes.*

*Pursuant to article 30.6 of Royal Decree 1362/2007 of 19 October 2007, as from the date of this application, those shareholders of Fomento de Construcciones y Contratas, S.A. (FCC) who acquire securities with voting rights attached must notify the Spanish Securities Market Commission (CNMV) of such acquisition when the number of voting rights held by them reaches or exceeds 1%. Likewise, shareholders who already hold 3% of the voting rights shall notify any transaction involving a subsequent change in this percentage.*

*Pursuant to the provisions of section 2.b) of Rule Five of CNMV Circular 1/2017 of 26 April, as of the date of this announcement, the liquidity contract of Fomento de Construcciones y Contratas, S.A. (FCC), if any, shall be suspended as of the date of this announcement.*

**TO THE SPANISH SECURITIES MARKET COMMISSION**

Fomento de Construcciones y Contratas, S.A. ("**FCC**" or the "**Company**"), registered with the Commercial Registry (*Registro Mercantil*) of Barcelona (at volume 36005, page 22, sheet B-26947), with registered office in Barcelona, calle Balmes, no. 36 (postal code 08007), with tax identification number (NIF) A-28037224 and LEI code 95980020140005178328, duly represented by Mr. Pablo Colio Abril, holder of Spanish national identity card (DNI) 51399485-M, of legal age and Spanish nationality, in his capacity as Chief Executive Officer of FCC, making use of the powers expressly granted to him by virtue of the resolution passed by the Board of Directors of the Company dated 19 July 2023,

**EXHIBITS**

**I. DECISION TO MAKE THE OFFER**

FCC has decided to make a public tender offer by way of capital reduction through the acquisition of a maximum of 32,027,600 treasury shares (*autocartera*) (the "**Offer**"), each with a nominal value of 1 euro, representing 7.01% of the share capital of the Company, for subsequent amortization, on the terms and conditions described in this application and in the accompanying prospectus (the "**Prospectus**").

The decision to launch the Offer has been taken by FCC by virtue of the resolution of the Chief Executive Officer of the Company adopted on 28 August 2023 pursuant to the authorisation granted to him by resolution of the Board of Directors of the Company dated 19 July 2023, which is detailed below together with the other milestones in relation to the Offer (in chronological order).

- On 28 June 2023, the Board of Directors of FCC unanimously resolved to call an extraordinary General Shareholders' Meeting of the Company to submit for approval, under item two on the agenda, a reduction of share capital through the acquisition of treasury shares for subsequent amortization, in accordance with the provisions of Section 6 of Chapter III, of Title VIII of the recast text of the Spanish Companies Act (*Ley de Sociedades de Capital*) and article 12 of Royal Decree 1066/2007, of 27 July (*Real Decreto 1066/2007, de 27 de julio, sobre el régimen de las ofertas públicas de adquisición de valores*) (the "**Royal Decree 1066/2007**") for a maximum nominal amount of 32,027,600 euros (the "**Capital Reduction**", together with the Offer, the "**Transaction**"), through a public tender offer launched by the Company and addressed to the holders of FCC's shares for a maximum of 32,027,600 treasury shares, with a nominal value of 1 euro each, at a price per share of 12.50 euros and in accordance with the other main terms and conditions set out in the agreement itself.

This agreement was announced to the market through the publication of the corresponding communication of "privileged information" (*información privilegiada*) (IP) on the website of the Spanish Securities Market Commission (the "**CNMV**") ([www.cnmv.es](http://www.cnmv.es)) and on the Company's corporate website ([www.fcc.es](http://www.fcc.es)).

- On 19 July 2023, the extraordinary General Meeting of Shareholders of the Company resolved, at its meeting held on first call and with the favourable vote of 93.58% of the share capital in attendance, equivalent to 85.70% of the total share capital, to carry out the Capital Reduction, as well as to establish the main terms and conditions of the Offer. Specifically, the aforementioned vote produced the following result: (i) shareholders holding 372,656,613 FCC shares representing 93.58% of the share capital in attendance at the General Meeting and 85.70% of the total share capital voted in favour of the Capital Reduction resolution; (ii) shareholders holding 25,572,324 FCC shares representing 6.42% of the share capital in attendance and 5.88% of the total share capital voted against; and (iii) shareholders holding 2,454 shares representing 0.001% of the share capital in attendance and 0.001% of the total share capital abstained.

This resolution was announced to the market through the publication of the corresponding communication of "other relevant information" (*Otra Información Relevante*) (OIR) on the website of the CNMV and on the Company's corporate website.

- On 19 July 2023, following the extraordinary General Meeting, the Board of Directors of the Company unanimously resolved to grant powers of attorney in favour of the Chief Executive Officer, the other members of the Board of Directors of the Company, as well as the Secretary and the Vice-secretary of the Board of Directors, so that any of them, acting in the name and on behalf of the Company, may launch the Offer in the terms and conditions that were set out in the resolution passed by the General Meeting and which were developed by the Board of Directors at that meeting, and with express powers of substitution in the executives of the Company, as deemed appropriate, to carry out as many actions as may be necessary or appropriate in relation to the Offer, including the signing and presentation of the Prospectus.

In particular, the Board of Directors of the Company determined that the Offer would be made after the end of the term for challenging the Capital Reduction by creditors, which ended on 21 August 2023 without any creditor of the Company having challenged to the Capital Reduction.

This resolution was announced to the market through the publication of the corresponding notice of "other relevant information" (*Otra Información Relevante*) (OIR) on the website of the CNMV and on the Company's corporate website.

The launching of the Offer does not require the adoption of any additional agreements by any other person or entity.

## II. DECLARATION OF THE GUARANTEE OF THE OFFER

The Offer is launched for a total of 32,027,600 FCC shares at a price of 12.50 euros per share payable in cash. As a result, the maximum total amount to be paid by the Company in the Offer amounts to 400,345,000 euros.

In accordance with the provisions under article 15 of the Royal Decree 1066/2007, FCC will file with the CNMV, within the maximum term provided for in article 17 of the Royal Decree 1066/2007, a bank guarantee as security for the Offer.

### III. MAIN FEATURES OF THE OFFER

#### III.1. Identification of the company as offeror and offeree:

The Company, in its dual capacity as offeror and offeree, is Fomento de Construcciones y Contratas, S.A., a listed Spanish public limited company.

The share capital of FCC amounts to 456,667,071 euros, divided into 456,667,071 ordinary shares of 1 euro of nominal value each, belonging to a single class and series, fully subscribed and paid up. The FCC shares are represented by book entries (*anotaciones en cuenta*), which are held by the Spanish central securities depository, Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U. (Iberclear), and its participating entities. FCC shares are listed on the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges and are included in the Stock Exchange Interconnection System (SIBE) (*Sistema de Interconexión Bursátil*).

FCC has not issued any pre-emptive subscription rights, convertible notes or exchangeable into FCC shares, warrants or any other convertible or exchangeable securities that may entitle the holder to acquire or subscribe FCC shares. There are also no non-voting shares or special classes of shares.

For the purposes of the provisions of article 4 of the Law 6/2023, of 17 March, of the Securities Markets and Investment Services (*Ley de los Mercados de Valores y de los Servicios de Inversión*) it is hereby stated that FCC is controlled by Control Empresarial de Capitales, S.A. de C.V. ("**CEC**"), to which are attributed, for the purposes of the provisions of article 5 of the Royal Decree 1066/2007 the voting rights of 324,476,669 shares of the Company, representing 71.05% of the share capital of FCC, corresponding to: (i) the voting rights of 303,433,953 shares, representing 66.45% of the share capital, of CEC's direct and indirect interest in FCC; and (ii) the voting rights of 21,042,716 shares, representing 4.60% of the share capital, held by Nueva Samede 2016, S.L.U., a company wholly controlled by Ms. Esther Koplowitz Romero de Juseu, which are attributed to CEC by application of the voting rights computation rule provided for in article 5.1.d) of the Royal Decree 1066/2007 and the computation rule provided for in article 24.2.b) of Royal Decree 1362/2007, of 19 October. Notwithstanding the foregoing, CEC does not hold any ownership or voting rights over the aforementioned 4.60% owned by Nueva Samede 2016, S.L.U.

For the purposes of the provisions of article 6 of the Royal Decree 1066/2007 it is also stated for the record that, of the 11 current members of the Board of Directors of FCC, CEC has appointed 6 members: Mr. Alejandro Aboumrad González (Vice-Chairman, Proprietary Director); Mr. Pablo Colio Abril (Chief Executive Officer, Executive Director); Ms. Carmen Alcocer Koplowitz (Proprietary Director); Mr. Carlos Slim Helú (Proprietary Director); Mr. Juan Rodríguez Torres (Proprietary Director); and Mr. Gerardo Kuri Kaufmann (Proprietary Director).

CEC is a Mexican company, incorporated under the laws of Mexico, with its registered office in Mexico City, Paseo de las Palmas, No. 781, 3rd floor, colonia Lomas de Chapultepec III sección (postal code 11000) and Mexican tax identification number CEC051219S38. CEC shares are not admitted to trading on any stock exchange.

In accordance with the corporate regulations applicable in Mexico, CEC consolidates FCC and its subsidiaries for accounting purposes.

CEC is not controlled by any person or entity, directly or indirectly, or in concert with any other person or entity.

**III.2. Type of offer:**

The Offer is a type of mandatory offer in accordance with the provisions of article 12 of the Royal Decree 1066/2007. It is a public tender offer for the reduction of capital through the acquisition of own shares.

**III.3. Offeror's participation in the offeree company:***(a) Information of treasury shares (autocartera)*

At the date of this application for authorisation, FCC holds 44,957 treasury shares, representing 0.01% of its share capital.

During the 12 months prior to the date of publication by FCC (28 June 2023) of the communication of "privileged information" (*Información Privilegiada*) (IP) relating to the Transaction and up to the date of this application for authorisation, the Company has acquired 2,737,890 treasury shares, representing 0.60% of FCC's current share capital, the highest price paid in the context of the aforementioned acquisitions being 9.84 euros. In particular, of the aforementioned 2,737,890 treasury shares, 1,719,878 treasury shares were acquired by FCC under the treasury share buyback programme established by the Company on 14 June 2022 and terminated early by resolution of the Board of Directors on 14 June 2023, and 1,018,012 treasury shares were acquired by FCC on the market or allocated to the Company in the scrip dividend distributions implemented by the Company in 2022 and 2023.

In relation to the Company's treasury shares, in June 2023, FCC proceeded to redeem 3,521,417 treasury shares through the execution of a capital reduction for a nominal amount of 3,521,417 euros by resolutions of the ordinary General Shareholders' Meeting and the Board of Directors on 14 June 2023. The public deed of this capital reduction was registered with the Commercial Registry on 27 June 2023.

Likewise, in July 2023, FCC proceeded to the redemption of 854,234 treasury shares through the execution of a capital reduction for a nominal amount of 854,234 euros by resolutions of the extraordinary General Shareholders' Meeting and the Board of Directors on 19 July 2023. The public deed of this capital reduction was registered with the Commercial Registry on 25 July 2023.

Finally, in July 2023, FCC issued a total of 22,697,739 new ordinary shares through the execution of a capital increase for a nominal amount of 22,697,739 euros in the framework of the distribution of the scrip dividend executed by resolutions of the ordinary General Shareholders' Meeting of 14 June 2023 and of the Board of Directors of 28 June 2023, with 44,957 treasury shares being assigned to FCC. The public deed of this capital increase was registered at the Commercial Registry on 25 July 2023.

*(b) Information relating to the transactions made by CEC over the shares of FCC*

CEC received 22,503,464 FCC shares as part of the scrip dividend distributions implemented by the Company in 2022 and 2023. Apart from the foregoing, CEC has not made, directly or indirectly, any purchases of FCC shares during the 12 months prior to the date of publication by the Company (28 June 2023) of the "privileged information" (*Información Privilegiada*) (IP) communication relating to the Transaction and up to the date of this application for authorisation.

**III.4. Securities and markets targeted by the offer:***(a) Securities targeted by the Offer*

The Offer is addressed to all holders of FCC shares and extends to the acquisition of a maximum of 32,027,600 fully subscribed and paid up FCC treasury shares, representing 7.01% of FCC's share capital.

The share capital of FCC amounts to 456,667,071 euros, divided into 456,667,071 ordinary shares. The Offer does not target the 44,957 treasury shares held by the Company, which have been blocked in order to prevent them from being transferred in the context of the Offer.

Consequently, excluding the treasury shares that have been blocked, the Offer is aimed at the holders of 456,622,114 FCC shares, representing 99.99% of its share capital, and at the acquisition of the maximum number of shares indicated above.

The terms of the Offer are identical for all FCC shares to which the Offer is addressed and for all FCC shareholders. There are no other FCC securities other than the shares that are the object of the Offer to which, in accordance with the applicable regulations, the Offer must be addressed.

In the event that the shares held by those shareholders who accept the Offer exceed the maximum limit of the Offer, for the settlement of the Offer, the distribution rules will be applied by means of a proportional system in accordance with the provisions of article 340.2 of the Spanish Companies Act and article 38.2 of the Royal Decree 1066/2007.

Apart from the FCC treasury shares, no additional FCC shares have been blocked as part of the Offer.

The Board of Directors of the Company has received a letter dated 9 August 2023 from CEC, the main shareholder of FCC, holder of a direct interest of 57.86% in the share capital of FCC, in which it expresses its commitment to not accept the Offer with the 264,208,536 shares of the Company that it owns. Likewise, the Board of Directors has received a letter dated 9 August 2023 from Dominum Dirección y Gestión, S.A., a wholly-owned subsidiary of CEC, holder of a direct interest of 8.59% in the share capital of FCC, in which it expresses its commitment to not accept the Offer with the 39,225,417 shares of the Company that it owns. Similarly, the Board of Directors of the Company has received a letter dated 9 August 2023 from Finver Inversiones 2020, S.L.U., a shareholder of FCC holding a direct interest of 11.37% in the share capital of FCC, in which it also expresses its commitment to not accept the Offer with the 51,945,055 shares of the Company that it owns. No other shareholder of FCC has conveyed to the Board of Directors any other intention or commitment to accept or not to accept the Offer.

*(b) Markets targeted by the Offer*

The Offer is made exclusively in the Spanish market, the only market in which FCC's shares are listed.

**III.5. Consideration:**

The Offer is launched as a purchase (*compraventa*). The consideration offered by the Company to the holders of FCC shares consists of cash and amounts to 12.50 euros per FCC share.

As the Offer extends to the acquisition of a maximum of 32,027,600 FCC shares, the maximum total amount to be paid by the Company in the Offer amounts to 400,345,000 euros.

Notwithstanding that the Company does not intend to distribute any dividends prior to the settlement of the Offer, any distribution of dividends, reserves or any other distribution to its shareholders prior to the settlement of the Offer, whether ordinary, extraordinary, interim (*a cuenta*) or supplementary, would reduce the Offer price by an amount equal to the gross amount per share of the distribution, provided that the date of publication of the result of the Offer in the listing bulletins (*boletín de cotización*) matches with or is subsequent to the ex-dividend date.

FCC has committed sufficient funding to obtain the necessary funds to meet the total consideration under the Offer.

Compliance with the obligations of the Company resulting from the Offer will be secured by a bank guarantee in accordance with the provisions of article 15 of the Royal Decree 1066/2007.

The compensation offered (price per share) has been fixed by the Company by resolution of the extraordinary General Meeting of Shareholders held on 19 July 2023, under item two of the agenda, and the Offer is required by virtue of the provisions of article 338.1 of the Spanish Companies Act and article 12 of the Royal Decree 1066/2007. The Company considers that the compensation offered is considered to be an equitable price (*precio equitativo*) within the meaning of article 110 of the Royal Decree 6/2023, of 17 March and article 9 of the Royal Decree 1066/2007. In this respect, the price of the Offer is higher than the highest price that the Company has paid or agreed to pay for shares in the Company during the 12 months prior to the date of publication by FCC (28 June 2023) of the communication of "privileged information" (*Información Privilegiada*) (IP) relating to the Transaction (see section III.3). It is expressly stated for the record that the Offer does not constitute a delisting offer or offer by exclusion for the purposes of article 10 of the Royal Decree 1066/2007 subject to the criteria and valuation methods of the aforementioned article.

Notwithstanding that the information provided below on the premium that the Offer price represented with respect to certain quoted prices of FCC shares may have changed since the date of the announcement of the Transaction (28 June 2023), and may change since the date of this application for authorisation, it is hereby stated that the consideration offered by FCC under the Offer represented a premium of 38% with respect to the weighted average market price of the Company's shares over the last 6 months prior to 28 June 2023, date of publication by FCC of the communication of "privileged information" (*Información Privilegiada*) relating to the Transaction.

The Board of Directors considers that the consideration offered by FCC within the framework of the Offer is fair from a financial standpoint for FCC, an opinion that has been confirmed by means of a fairness opinion issued by CaixaBank, S.A. addressed to the Board of Directors.

#### **III.6. Conditions for the effectiveness of the offer:**

The effectiveness of the Offer is not subject to any conditions and, in particular, is not subject to a minimum number of acceptances.

#### **III.7. Antitrust and authorisation of other supervisory bodies:**

##### *(a) Antitrust authorizations*

The acquisition of FCC shares through the Offer does not constitute an economic concentration within the meaning of the merger control rules and, therefore, does not require notification, clearance (or non-opposition) or administrative verification by the antitrust authorities of any jurisdiction.

##### *(b) Other authorizations:*

The potential acquisition of shares subject to this Offer does not constitute a transaction subject to authorisation of foreign direct investments by virtue of the provisions of article 7.bis of Law 19/2003, of 4 July and in the sole transitory provision of Royal Decree-Law 34/2020, of 17 November.

Furthermore, the Company considers that the Offer does not require any other authorisation, opposition or notification from any other national or foreign supervisory body or authority other than the CNMV.

#### **III.8. Agreements related to the offer:**

Neither FCC nor CEC, its controlling shareholder, has any agreement of any nature whatsoever with any shareholder of the Company or any member of its administrative, management and supervisory bodies in connection with the Offer.

No specific advantages have been reserved for FCC shareholders or members of its administrative, management and supervisory bodies in connection with the Offer.

### **III.9. Stock Exchange initiatives:**

The Company and CEC, its controlling shareholder, value the continued listing of FCC on the stock exchange and intend that FCC's shares will continue to be listed on the Madrid, Barcelona, Bilbao and Valencia stock exchanges on which they are currently listed.

If, as a result of the Offer, the FCC shares do not have an adequate distribution or frequency of trading and stock market liquidity, the Company will analyse the situation and will adopt such decisions as are reasonable under the circumstances for the continued listing of such shares on the stock exchange.

Given the partial nature of the Offer, in no case shall the squeeze-out rights referred to in Chapter X of the Royal Decree 1066/2007 be applicable.

### **III.10. Other informations:**

The Company declares that as of the date of this application for authorisation there is no other information which may be necessary for a proper understanding of the Offer, other than the information included in this application for authorisation.

## **IV. DOCUMENTATION ACOMPANYING THIS APPLICATION**

For the purposes of the provisions of article 17.1 of the Royal Decree 1066/2007, of 27 July, the following documents are attached to this application for authorisation:

- Explanatory prospectus of the Offer duly endorsed and signed.
- Documentation accrediting (i) the corporate resolution adopted by the Board of Directors of FCC on 28 June 2023 relating to the call of the Extraordinary General Shareholders' Meeting held on 19 July 2023 approving the Capital Reduction and setting the main terms and conditions of the Offer; (ii) the corporate resolution adopted by the Extraordinary General Meeting of Shareholders of FCC on 19 July 2023 relating to the Capital Reduction and the setting of the main terms and conditions of the Offer; and (iii) the corporate resolution adopted by the Board of Directors of FCC on 19 July 2023 relating to the delegation of powers in favour of certain persons to launch the Offer, among other matters.
- Documentation accrediting the decision of the Chief Executive Officer of FCC dated 28 August 2023 relating to the launching of the Offer.
- Certification issued by the Vice secretary of the Board of Directors of FCC, certifying that there are no creditors who have opposed the Capital Reduction, after the end of the legally established opposition period.
- Information relating to FCC operations on own shares.
- Certificate of identity for the blocking (*certificado de legitimación para la inmovilización*) of FCC's treasury shares.
- Individual audited annual accounts of CEC for the year ended 31 December 2022.
- Consolidated audited annual accounts of CEC for the year ended 31 December 2022.
- Undertakings not to accept the Offer.
- Template of announcement of the Offer referred to in article 22 of the Royal Decree 1066/2007.
- Letter issued by FCC regarding other forms of advertising or dissemination of the Offer.
- Letter issued by Renta 4 Banco, S.A. as market member that will act on behalf of FCC in the intervention of the acquisition and settlement of the Offer.

In accordance with the provisions of article 17.1 of the Royal Decree 1066/2007, the remaining documentation required by article 20 of the Royal Decree 1066/2007 that is not attached hereto shall be submitted within 7 working days following the submission of the application.

## **V. NOTIFICATIONS**

FCC indicates the following as the means for notifications related to the present proceedings before the CNMV:

### **ECIJA Legal, S.L.**

To: Mr. Miguel Sánchez Ruiz

Calle Serrano, 69

28006 Madrid (España)

Tel.: (+34) 917816160

E-mail: [msanchezr@ecija.com](mailto:msanchezr@ecija.com)



By virtue of the above,

## REQUESTS

The CNMV to consider this document, together with the Prospectus and other accompanying documentation, as having been submitted and, once FCC has submitted, within a maximum period of 7 working days, the other necessary documents in accordance with article 20 of the Royal Decree 1066/2007, to admit them for processing and authorise the launch of the Offer.

Signed on behalf of Fomento de Construcciones y Contratas, S.A., in Madrid on 28 August 2023.

p.p.

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Pablo Colio Abril  
Chief Executive Officer of FCC

## LEGAL NOTICE:

**This application for authorisation and its contents do not imply the making or dissemination of the Offer in jurisdictions or territories other than Spain. Accordingly, this application for authorisation and the Prospectus, which will be published following authorisation of the Offer by the CNMV, will not be published, sent or distributed in any jurisdiction or territory where its publication may be prohibited or restricted by law or where the registration or filing of additional documentation is required, and persons receiving this application for authorisation or the Prospectus may not publish or distribute them in such jurisdictions or territories.**

**In particular, this application for authorisation will not be published or distributed, nor will the Offer be made, directly or indirectly, in the United States of America, whether by the use of electronic mail, postal mail or any other means or instrumentality of international or interstate commerce, or of any establishment of a national, state or other securities exchange, of the United States of America and no person may accept the Offer by any such use, means, instrumentality or establishment. This application for authorisation is not an offer to buy and does not constitute an offer to buy or an invitation or offer to sell in the United States of America.**