

*Translation of originally issued in Spanish and prepared in accordance with the regulatory applicable to the Group. In the event of a discrepancy, the Spanish-language version prevails.*



**INFORMATION DOCUMENT**

**CAPITAL INCREASE CHARGED TO RESERVES**

**ACS, ACTIVIDADES DE CONSTRUCCIÓN Y  
SERVICIOS, S.A.**

**8 January 2024**

*This Information Document has been prepared pursuant to the provisions in Article 1.5.(g) of Regulation (UE) 2017/1129 of the European Parliament and of the Council, of June 14, 2017, on the prospectus that should be published in case of public offer or admission to trading of securities in a market regulated and repealing Directive 2003/71/CE.*

## 1 Object

The Annual General Meeting of Shareholders of ACS, Actividades de Construcción y Servicios, S.A. (“ACS” or the “Company”) held on 5 May 2023 resolved to increase the share capital of ACS charged to voluntary reserves in an amount to be determined according to the terms established in the agreement itself (the “**Capital Increase**”), as well as to reduce the share capital of the Company by an maximum amount equal to the amount of the share capital that is actually issued as a consequence of the Capital Increase (the Capital Increase and this reduction are the “**Resolution**”), delegating the execution of the resolution to the Board of Directors (with express powers of substitution) (the “**Resolution**” pursuant to article 297.1.a) of the Capital Companies Act, approved by Legislative Royal Decree 1/2010, of 2 July (the “**Capital Companies Act**”).

According to the terms of the Resolution, the maximum reference fair value of the Capital Increase is 580 million euros, and it may be executed within the year following the date of the Resolution on one or two occasions at the very most, and the reference fair value is not to exceed 450 million euros in the Second Execution, or 130 million euros in the Second execution, in the event it is carried out.

The Board of Directors of the Company, at its meeting held on 14 December 2023, among, and using the powers of delegation in the Resolution, resolved to carry out a Second Execution of the Capital Increase delegate indiscriminately to the Executive Commission, the Chairman of the Board of Directors and the Director and Secretary so that they may carry out any actions they deem appropriate or necessary for the execution of everything contained in the Resolution and they may sign any documents required or considered appropriate for the above-mentioned purposes.

By virtue thereof, on 8 January 2024, resolved to carry out a Second Execution of the Capital Increase (the “**Second Execution**”) setting the maximum reference value of said Second Execution (Amount of the Executed Option) at 130 million euros. In the event (a mere theoretical possibility) that none of the shareholders were to choose to sell their rights to the Company pursuant to the Purchase Commitment (section 2.2 below) and that the PreCot (quoted price, the reference Price used to determine the number of shares to be issued, see also section 2.2 below) coincides with the closing share price of the day before the date of this document, this Second Execution would determine a capital increase of approximately 1.16%. However, as a consequence of the simultaneous capital reduction by means of the amortisation of shares that is mentioned in section 2.1 below, in any event following the increase and the reduction, the current share capital amount will remain unchanged.

Pursuant to the provisions in Article 1.5. (g) of Regulation (EU) 2017/1129 of the European Parliament and of the Council, of June 14, 2017, on the prospectus that should be published in case of public offer or admission to trading of securities in a market regulated and repealing Directive 2003/71/EC, it is not necessary to prepare and publish a prospectus in respect of the issuance and Listing of the shares issued as a consequence of the Second Execution insofar as the existence of this information document means that a document is available with information on the number and nature of the shares and the reasons for and details of the offer.

The purpose of this information document is to furnish the information among that mentioned above which is available as of the present date. Once the Second Execution is

executed and the remaining information is available, it will be disclosed as a supplement to this information document. The disclosure of the Second Execution of the Capital Increase and of the particulars thereof that are yet to be concretised by means of a supplement to this information document is scheduled to take place on 16 January 2024.

## 2 Purpose and functioning of the Capital Increase

### 2.1 Purpose

The purpose of the transaction forming the object of this Informative Document is to offer the shareholders of the Company, in lieu of what would be an interim cash dividend, fully paid-up shares with the possibility of immediately monetising the free allotment rights corresponding to said shares through their sale to the Company at a pre-defined price.

The transaction is in line with similar transactions carried out by ACS, since 2012, and with the practices of other important listed companies in recent years. It involves remunerating the shareholder in accordance with a flexible "optional dividend" which enables to receive and retain the shares or the receipt of money in conditions which are equivalent to those of an actual dividend. It should be noted that it has been decided to use the voluntary reserves in this operation (both in the capital increase, as in the repurchase of the rights, or any other charge that must be made against reserves for accounting purposes).

Likewise, at the time of the Second Execution, has resolved to partially execute the capital reduction by means of the amortisation of treasury shares established in the Resolution in a nominal amount maximum equal to the actual nominal amount of the Second Execution, simultaneously thereto. With this reduction, the shareholders who decide to transfer their free allocation rights as a consequence of the Second Execution will not be subject to a dilution of their ownership interest in the Company.

### 2.2 Functioning

The shareholders of the Company will receive a free allocation right for each ACS share in their possession. These shall be negotiable rights, and therefore they may be transferred on the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges during a term of 15 calendar days, after which the rights will automatically become newly issued shares of ACS, and they will be attributed to those who at the time are holders of free allocation rights.

Therefore, at the time of the Second Execution, the shareholders of ACS will be free to choose between:

- (a) Not transferring their free allocation rights. In such event, at the end of each trading period the shareholder will receive the fully liberated new shares to which he is entitled. As explained in section 5 below, the allocation of shares would not be subject to withholding.
- (b) Transferring the entirety or part of their free allocation rights to ACS by virtue of the Purchase Commitment assumed by ACS at a guaranteed fixed price for the Second Execution (the "**Purchase Commitment**"). In this way, a shareholder would choose to monetise his rights, receiving the Executed Option in cash rather than receiving shares. Rights that were acquired on the Secondary market cannot be transferred. The free allocation rights may only be transferred to the Company by

virtue of the Purchase Commitment by the shareholders who had acquired their shares until 18 January 2024 (on the date of publication of the announcement of the Second Execution in the Mercantile Registry Official Gazette, BORME) and whose transactions had been settled until 22 January 2024 to the Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U (Iberclear), both inclusive. As it is developed in section 5 below, the tax regime applicable to the amount obtained as a result of the exercise of this option is equivalent to that of the cash dividends and, therefore, the amount to be paid to the shareholders will be subject to the corresponding withholding in accordance with the rules established in the regulations in force.

- (c) Transferring the entirety or part of his free allocation rights on the market. In this case a shareholder would also choose to monetise his rights, but he would not receive a guaranteed fixed price, because the consideration for the rights would depend on the market conditions in general and on the quoted Price of those rights in particular. As it is developed in section 5 below, the amount of the sale of the rights in the market will be considered as capital gain and will be subject to the corresponding withholding in accordance with the rules established in the regulations in force for passive taxpayers of the Tax on the Income of Natural Persons (IRPF), and for their part, the taxable persons of the Corporation Tax (“IS”) will obtain a benefit or loss determined according to the accounting treatment that is applicable, which will have the corresponding tax regime according with the IS regulations.

Also, shareholders may combine the above options (that is, they may choose one or more of them in respect of the entirety or part of the rights and shares to which they are entitled in the Second Execution of the Capital Increase), depending on what they freely decide.

Shareholders who do not communicate a specific decision will receive the number of new shares to which they are entitled.

As stated above, shareholders will receive a free allocation right for each share of ACS of which they are holders. The number of rights required to receive a new share and the guaranteed price at which ACS shall undertake to buy the rights from those choosing to receive cash by virtue of the Purchase Commitment will depend on the quoted price of the ACS share on the days prior to the Second Execution of the Capital Increase and on the number of shares outstanding at the time<sup>1</sup>. The number of rights and the final price of the Purchase Commitment are scheduled to be disclosed on 16 January 2024, by means of a supplement to this information document, and said data will be calculated by applying the formulas established in the Resolution approved by the Meeting (available at the ACS website ([www.grupoacs.com](http://www.grupoacs.com)) and at the CNMV website ([www.cnmv.es](http://www.cnmv.es)), said formulas being laid out below.

In any event, the number of shares to be issued shall be such that the fair value of those shares calculated according to the quoted Price of the ACS share on the days before the Second Execution of the Capital Increase shall be 130 million euros<sup>2</sup>. Said amount has been

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<sup>1</sup> The number of ACS shares currently in circulation is 278,164,594

<sup>2</sup> This amount may be slightly lower as a result of the rounding provided in the Agreement.

established pursuant to the provisions in the Resolution of the Annual General Meeting of Shareholders.

In this way, the approximate value of each free allocation right is 0.459 euros<sup>3</sup>. This shall also be the approximate price of the ACS Purchase Commitment.

Specifically, the number of rights required in order to receive a new share and the price of the Purchase Commitment in respect of those rights shall be calculated as follows:

*No. of rights = NTAcc / (130,000,000 / PreCot), (rounded to the next highest whole number).*

Where,

“**No. of rights**” shall be the number of rights required in order to receive a new share of ACS in the Second Execution.

“**NTAcc**” shall be the number of shares outstanding on the date of the Second Execution of the Capital Increase (as of the date of this document, 278,164,594 shares). For the purpose herein, the date of the Second Execution shall be that on which the Executive Commission, the Chairman of the Board of Directors or the Director-Secretary General, by virtue of the delegation of powers executed by the Board of Directors at its meeting of 14 December 2023, carries out the arithmetical operations resulting from the application of the formulas mentioned herein, in order to calculate the provisional number of shares to be issued, the number of free allocation rights required for the allocation of a share, the “PreCot” (quoted price) and the maximum nominal amount of the Capital Increase as a result of the Second Execution, which is scheduled to take place on 16 January 2024;

“**PreCot**” shall be the (simple) arithmetic mean of the weighted average quoted prices of the Company share on the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges in the 5 stock exchange sessions of 9, 10, 11, 12 and 13 January 2024, rounded to the nearest thousandth of euro and, if there is a half thousandth euro, it will be rounded to immediately higher thousandth of euro

If necessary, ACS (Or an entity of its group, if any, holds shares of ACS) shall waive the number of free allocation rights required to guarantee that the number of shares to be issued in the Second Execution and the number of rights required to receive a share is a whole number rather than a fraction.

“**Fixed price of the Purchase Commitment**” =  $\text{PreCot} / (\text{No. of rights} + 1)$  rounded to the nearest thousandth of euro and, if there is a half thousandth euro, it will be rounded to immediately higher thousandth of euro.

Where “PreCot” and “No. of rights” have the meanings stated above.

### 3 Details of the Offer

#### 3.1 Calendar of the Second Execution

The calendar scheduled for the Second Execution is the following:

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<sup>3</sup> This approximate value is simply indicative and does not have to coincide with the definitive one. It has been calculated based on the closing price of the Company's stock as of the date of this informative document.

16 January 2024: Publication, by means of a supplement to the information document, of the number of free allocation rights required to receive a share and the final price of the Purchase Commitment.

18 January 2024: Publication of the announcement of the Second Execution in the BORME. Last day in which ACS shares are traded with the right to participate in the Second execution of capital increase (last trading day).

19 January 2024: Commencement of the trading period of the free allocation rights and of the term for requesting the cash remuneration (sale of rights to ACS) by virtue of the Purchase Commitment. Date from which ACS shares are traded without the right to participate in the Second execution of capital increase (ex-date)

22 January 2024: Determination date by Iberclear of the positions for the allocation of free allocation rights (record date).

26 January 2024: End of the term for requesting the cash remuneration (sale of rights to ACS) by virtue of the Purchase Commitment.

2 February 2024: End of the trading period for the free allocation rights. Acquisition by ACS of the free allocation rights from the shareholders who have chosen to receive cash by virtue of the Purchase Commitment.

5 February 2024: ACS waives any free allocation rights which holds the end of the trading period. End of the Second Execution.

6 February 2024: Cash payment to the shareholders who requested their remuneration in cash by virtue of the Purchase Commitment.

6 - 13 February 2024: Formalities for the registration of the Second Execution and the Listing of the new shares on the Spanish Stock Exchanges<sup>4</sup>.

14 February 2024: Date scheduled for the new shares to begin trading on the Spanish Stock Exchanges<sup>5</sup>.

### **3.2 Allocation of rights and procedure for choosing between cash or new shares**

The free allocation rights shall be allocated to the shareholders of ACS who had acquired their shares until 18 January 2024 (date of publication of the announcement of the Second Execution in the Mercantile Registry Official Gazette, BORME) and whose transactions had been settled until 22 January 2024 in Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U. (Iberclear), both inclusive. The period for trading these rights on the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges via the Stock Exchange Interconnection System (Continuous Market) shall commence on the next business day after the publication of the announcement of the execution of the Capital Increase in the Mercantile Registry Official Gazette, BORME, (that is 19 January 2024) and it will last fifteen calendar days (from 19 January to 2 February 2024, both inclusive).

During the trading period for the free allocation rights, shareholders may choose between cash or new shares under the terms stated above, and they may acquire on the market

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<sup>4</sup> Subject to the registration deadlines of the Commercial Registry.

<sup>5</sup> Subject to obtaining the appropriate authorizations.

sufficient free allocation rights in the proportion required to be able to subscribe new shares. However, shareholders wishing to accept the ACS Purchase Commitment in respect of rights and to receive cash at the guaranteed fixed price must notify their decision no later than 27 January 2023. The Purchase Commitment applies only to the rights received free of charge by shareholders, whereas any rights bought on the market are excluded.

To decide between the options provided by ACS in connection with the Second Execution of the Capital Increase, shareholders must contact the institutions where they have deposited their shares and the corresponding free allocation rights by virtue of the Purchase Commitment within the terms indicated in the preceding paragraph. In the absence of an express communication, a shareholder shall receive the number of new shares in proportion to what he is entitled, being fully liberated shares<sup>6</sup>.

### **3.3 Expenses and fees**

This Second Execution will be free of expenses and fees in respect of the allocation of the newly issued shares. ACS shall bear the issuance, subscription, circulation, listing and any other expenses related to the Second Execution of the Capital Increase.

Subject to the foregoing, the shareholders of the Company must bear in mind that institutions that are members of Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. Unipersonal (Iberclear) at which they have their shares deposited may establish, in accordance with the law in force any administration-related fees and expenses that they freely determine, arising from maintaining the securities in their book records. Also, the above-mentioned institutions may establish, according to the law in force, any fees or expenses related to the processing of orders to buy and sell free allocation rights which they freely determine.

## **4 Number and nature of the shares to be issued**

### **4.1 Number of shares to be issued**

The number of shares to be issued as a consequence of the Second Execution of the Capital Increase (“NAN”) shall be that resulting from the formula approved by the Resolution, by the Annual General Meeting of Shareholders of ACS indicated below, rounded to the immediately lower whole number:

$$\text{NAN} = \text{NTAcc} / \text{No. of rights}$$

Where NTAcc and No. of rights have the meaning indicated above.

The number of shares to be issued in the Second Execution is scheduled to be disclosed on 16 January 2024, by means of a supplement to this information document.

Subject to the foregoing, the number of shares actually issued in the Second Execution will depend on the number of shareholders asking to receive their remuneration in cash at the

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<sup>6</sup> It is possible that, once the negotiation period of the free allocation rights is over, the number of rights held by a particular holder is such a number that, taking into account the calculation formulas referred to in this document, Do not give the right to receive a whole number of shares. In that case, the entity in which the holder of the free allocation rights has them deposited may sell the number of rights that result in a fraction of a new share, so that the holder receives the proceeds of the sale in cash and do not lose the intrinsic value of those rights. Notwithstanding the foregoing, this possibility is subject to the terms and conditions of the securities deposit and administration contract that has been signed with the depositary entity in question or to the instructions given by the rights holder.

fixed price of the Purchase Commitment.(ACS shall waive the free allocation rights acquired by virtue of the Purchase Commitment from shareholders who ask, as well as the remaining free allocation rights owned by it) Nominal value, issuance rate and representation of the shares

The new shares issued in the Second Execution of the Capital Increase shall be ordinary shares, each with a nominal value of 0.5 euros per share, of the same class and series as those currently outstanding, represented by means of book entries, the accounting of which is entrusted to Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U. (Iberclear) and its member entities.

#### **4.2 Nominal value, type of issue and representation of the shares**

The new shares issued on the occasion of the Second Execution of the Capital Increase will be ordinary shares of 0.5 euros per share of nominal value each, of the same class and series as those currently outstanding, represented by means of annotations in account, the accounting record of which will be attributed to the Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, SAU (Iberclear) and its participating entities.

#### **4.3 Reserve to which the issuance of the shares is charged and balance sheet used as a basis for the operation**

The Second Execution of the Capital Increase in is liberated and, as such, does not entail any disbursement whatsoever for the shareholders of ACS. The disbursement will be made entirely against voluntary reserves, the amount as of December 31, 2022, amounted to 6,631,594,429.05 euros. Likewise, the acquisition by ACS of the free allotment rights as a consequence of the Purchase Commitment will be made entirely with charge to voluntary reserves.

The balance sheet serving as the basis for the Second Execution of the Capital Increase is the one corresponding to the year ended 31 December 2022, audited by KPMG Auditores, S.L., which is submitted for approval to the Annual General Meeting of Shareholders on 5 May 2023 under item one of the Agenda.

#### **4.4 Shares in deposit**

At the end of the trading period of the free allocation rights, any new shares that have not been allocated for reasons that cannot be attributed to the Company will be kept in deposit at the disposal of those accrediting their legitimate entitlement to the corresponding free allocation rights. Once three years have elapsed following the date when the trading period for the free allocation rights ended, any shares yet to be allocated may be sold according to the provisions in article 117 of the Capital Companies Act, on behalf and at the risk of the parties concerned. The net amount of said sale will be deposited at the Bank of Spain or at the General Deposit Fund at the disposal of the parties concerned.



#### **4.5 Rights of the new shares**

The new shares shall give their holders the same voting and dividend rights as the ordinary shares of ACS that are currently outstanding following the date on which the Second Execution of the Capital Increase is declared to be subscribed and called up.

#### **4.6 Listing**

ACS will apply for the listing of the new shares issued as a consequence of the Second Execution on the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges, via the Stock Exchange Interconnection System (Continuous Market) and will carry out the formalities and actions necessary for the Listing of the newly issued shares.

### **5 Tax regime**

Below there is a brief description of the tax regime applicable in Spain pursuant to Spanish legislation in force, in accordance with the various options available to shareholders. Said description does not constitute tax advice or include tax considerations that may be relevant to a shareholder in accordance with their personal circumstances. In particular, there is no mention of the consequences that may arise in their countries of residence for those shareholders who do not have tax residency in Spain. Therefore, it is advised that shareholders consult their tax advisors on the specific tax impact of the optional dividend, taking into consideration the particular circumstances of each shareholder or holder of free allocation rights. It is also recommended that particular attention is paid to any changes that may arise, both in the legislation in force on the date of this informative document and in its criteria for interpretation.

For the pertinent purposes, you are informed that both the free acquisition of preferential purchase rights and the capital increase will be made against voluntary reserves.

#### **5.1 Shareholders subject to IRPF and IRNR payments without a permanent establishment in Spain**

The tax regime applicable to shareholders subject to IRPF (*impuesto sobre la renta de las personas físicas* — personal income tax) and IRNR (*impuesto sobre la renta de no residentes* — income tax for non-residents), provided that they do not act through a permanent establishment in Spain, would be as follows:

- (i) In the event that a shareholder receives new shares that have been fully released as a result of the capital increase, shareholders would not receive any income and therefore, would not be subject to any withholdings or payments at all.

The acquisition value for these shareholders, both for the new shares received as a result of the capital increase and for the previous shares, will be the value resulting from distributing the total acquisition cost among the number of shares, both the old shares and the appropriate released shares. The age of such shares released for these shareholders will be equal to the previous shares held by the shareholder.

- (ii) In the event that shareholders sell their free allocation rights in the market, the income obtained from such transactions will be subject to the regime established by the tax regulations for preferential subscription rights giving rise to the corresponding profit or capital loss, accruing it in the tax period in which the aforementioned transfer occurs. Consequently, the amount obtained from transferring the free allocation rights in the market will be considered as a capital

gain for transferors subject to IRPF and IRNR for non-residents without permanent establishment in Spain, this gain is accrued in the tax period in which said transfer occurs. All this without prejudice to international agreements that may be applicable to those subject to IRNR without permanent establishment in Spain, including agreements signed by Spain to avoid double taxation and to prevent income tax evasion, to any other agreements to which they may be entitled, as well as to the exemptions provided for in the IRNR regulation.

The amount obtained in the transfers of free allocation rights by the shareholders who are taxable persons of the personal income tax will be subject to the corresponding withholding on account of this tax (currently, at a rate of 19%).

This withholding will be carried out by the appropriate depositing institution (or, failing this, by the financial intermediary or the notary public who has intervened in its transmission), without ACS intervening in implementing this withholding or providing tax information regarding its shareholders. Shareholders are therefore advised to contact the pertinent depositing institutions on this matter.

- (iii) In the event that they attend the purchase commitment and receive a cash payment, the amount received will be considered a return on movable capital derived from the participation in the Company's own funds. Said amount will be subject to the corresponding withholding on account of this tax (currently at a rate of 19%), which must be applied by the Company.

## **5.2 Shareholders subject to the IS and IRNR with permanent establishment in Spain**

These shareholders must account for the capital increase in accordance with the ICAC Resolution of March 5, 2019 (the "ICAC Resolution") or according to their own sectoral regulations.

In said resolution, it is established that the recipients of the free allocation rights must register a collection right, the counterpart being a financial income (which will have the nature of a dividend), regardless of which option the shareholder finally chooses. In order to clarify the possible fiscal significance of the aforementioned resolution, the Company presented a binding tax consultation before the Directorate General for Taxation ("DGT"), which was held on June 8, 2020 (reference number V1809-20). In addition, the DGT conducted two other binding consultations (reference number V1357-20 and V1358-20) clarifying both the accounting system (through clarifications made by the ICAC to the DGT) and the applicable tax regime following the ICAC's Resolution.

In accordance with the aforementioned consultations, and taking into account that the operation will be carried out with a charge to voluntary reserves other than the issue premium, these shareholders will be taxed in accordance with the accounting regulations and, therefore, in the event If the ICAC Resolution is applicable to them, they must register a financial income that will have the nature of a dividend (without prejudice to the application, where appropriate, of the exemption of article 21 of the IS Law). All this regardless of the option chosen by the shareholder: receive bonus shares, sale of the free allocation rights in the market or go to the Purchase Commitment.

Notwithstanding the foregoing, in accordance with the aforementioned consultations, the practice of withholding or depositing any account on the part of Company will not proceed in the cases in which the shareholders choose to receive released shares or for the sale of the free allocation rights. On the contrary, if they go to the Purchase Commitment and receive a remuneration in cash, the amount obtained will be subject to the corresponding withholding (currently at the rate of 19%).

## **6 Supplement to this information document and information available to the public**

As stated in prior sections of this document, certain information in respect of the Second Execution of the Capital Increase I not available as of the present date. Specifically, the number of shares to be issued in this Second Execution, the number of rights required to receive a share and the final price of the Purchase Commitment are scheduled to be published on 16 January 2024 by means of a supplement to this information document.

This document and the supplement to be disclosed on 16 January 2024 will be available on the website of ACS ([www.grupoacs.com](http://www.grupoacs.com)) and of the CNMV ([www.cnmv.es](http://www.cnmv.es)) as from the date of publication thereof.

Madrid, 8 January 2024

ACS, Actividades de Construcción y Servicios, S.A.

José Luis del Valle Pérez

Board member - Secretary General