

The key elements of the new Spanish Securities Markets Law

March 2023

The new Law approved systematizes and reorganizes the Spanish securities market regulation, adapts it to the recent provisions in several European directives, particularly in the area of crypto-assets and distributed ledger technologies, and simplifies and makes certain procedures more flexible in order to increase the competitiveness of the Spanish securities market. It also introduces new provisions in the field of tender offers, investment services firms and collective investment vehicles, and regulates for the first time the SPACs.

Law 6/2023, of March 17, on Securities Markets and Investment Services was published in the Official State Gazette on March 18, 2023.

It is envisaged as the new “framework law” for the securities markets and it is envisaged that it will be implemented by three royal decrees.

1. Simplification of securities market procedures

The new Law reduces the requirements for the issuing and admission to trading of securities and removes or relaxes certain administrative formalities with a view to increasing the competitiveness of the securities market.

- The procedure for issuing fixed income securities is simplified: their admission to trading requires verification only by the governing body of the regulated market (the AIAF market, for example), by removing verification by the Spanish National Securities Market Commission (CNMV), although the CNMV will still have to approve the necessary prospectus.
- Reporting obligations in the securities clearing and settlement process are eliminated: financial intermediaries will no longer have to provide information on the transactions they carry out within the framework of the information system (known as PTI) for the supervision of trading, clearing, settlement and registration of negotiable securities. However, the Law provides for a period of two years for central securities depositories and participating entities to adapt their infrastructures and facilities to this change.
- The definition of SME is broadened: in the context of the regulation of SME growth markets, debt issuers that do not have shares or similar instruments traded on any trading venue are included in the definition of SMEs if the nominal value of their debt issues during the previous year, on all trading venues in the European Union, does not exceed €50 million. This measure aims to facilitate the listing of companies, in these cases, on the BME Growth market.
- The possibility is recovered that a negotiable security that has been admitted to trading on a regulated market in another Member State may subsequently be admitted to trading on a Spanish regulated market without the consent of the issuer (former Article 32bis of Law 24/1988 of the Securities Market Law). In the event that the Issuer's consent is not given, the Issuer will not be obliged to provide directly to the regulated market that has admitted the financial instruments to trading the information relating to the requirements for admission of the securities.
- The period for issuing and publishing the half-yearly financial report for the second half of the fiscal year is extended from 2 to 3 months for obliged entities.

The penalty rules for securities market participants are simplified: infringements and penalties are set out in a single article for each type of infringing conduct and according to the EU Regulation from which they originate, and the limitation period for serious infringements is shortened from five to four years.

2. Tender offers

- Definition of control: in the definition of cases where a controlling stake determining the obligation to launch a tender offer is acquired, it is stated that in addition to side agreements, control may be obtained through “other types” of agreements with other securities holders.
- Voluntary delisting: the CNMV will be able to relieve a party of the obligation to launch a tender offer by reason of an application for the voluntary delisting of shares, in instances where the shares have been admitted for trading at another equivalent trading venue domiciled in the European Union.
- An item for “declared pandemics” has been included on the list of exceptional circumstances determining the offeror's obligation to produce an independent expert report giving reasons for the price offered in a voluntary tender offer, where within the two years preceding the notice of the offer any of those circumstances had existed and had affected market prices generally or in relation to the company concerned.
- Scope of application of the legislation on tender offers: the rules applicable to regulated markets in relation to tender offers are extended to include companies listed on a multilateral trading facility (MTF), such as BME Growth, and which are domiciled in Spain. Consequently, it is provided that multilateral trading facilities will also be subject to the rules on the voluntary delisting of financial instruments. In both cases, the provisions will only be applicable where the entry into force of the relevant implementing regulations occurs.

3. Crypto-assets and distributed ledger technology (DLT)

One of the main new elements of the legislation is the advancement it makes towards incorporating the EU legislation that will be contained in a future directive, and which accompanies the proposals for EU regulations on markets in crypto-assets, on the market infrastructures based on distributed ledger technology, and on digital operational resilience.

The foundations are laid so that, when the European legislation is approved, the CNMV will already have the necessary supervisory powers to safeguard investors and guarantee financial stability in this field.

The main innovations introduced in this area are:

- In relation to the market infrastructures based on DLT:
 - Marketable securities recorded or represented on systems based on distributed ledger technology are included in the scope of application of the Law and are considered financial instruments - subject to the specific provisions that will be established by regulations.
 - The option is provided of changing the representation of securities on systems based on DLT to book entries or certificates, after obtaining the consent of their holders and subject to the authorization of the CNMV.

- Issuers of negotiable securities represented by DLTs are required to designate an entity responsible for the administration of the registration and recording of these securities. This financial intermediary shall be in charge of the identification of the holders of the rights derived from the negotiable securities, and shall be subject to the CNMV's supervisory, inspection and sanctioning regime.
- Penalty regime: the CNMV is designated as the competent authority for the supervision of compliance with the Regulation (EU) on crypto-asset markets and a regime of infringements and penalties for non-compliance is established, such as the suspension of the authorization to provide crypto-asset services, or the temporary suspension of the members of the management bodies of the provider of these services from the exercise of their position.

4. SPAC

For the first time in Spain specific rules are introduced for special purpose acquisition companies - SPACs - (in the new Chapter VIII of Title XIV of the Capital Companies Law).

- Definition: a listed company formed for the purpose of acquiring the whole of or an interest in the capital of one or more other listed or unlisted companies, either directly or indirectly, in a sale, merger, spinoff, nonmonetary contribution, transfer en bloc of assets and liabilities or other similar transactions.
- Redemption mechanism: they will have to include at least one of the following redemption mechanisms from shareholders: (i) a right of withdrawal under the bylaws when the SPAC announces the acquisition or merger, (ii) the issuing of redeemable shares, or (iii) a capital reduction by repurchasing its own shares for redemption (launching a tender offer for a capital reduction).

To facilitate those mechanisms, a range of specific provisions are introduced, such as the right of withdrawal due to substitution of the corporate purpose not applying, removal of the creditors' right to object, specific provisions on treasury shares, the limits for issuing redeemable shares not applying, and an exception to the obligation to launch a mandatory tender offer.

- Freezing of funds and redemption value: the funds obtained in the tender offer will be frozen in an account held at a credit institution in the SPAC's name. The redemption value of the shares will be the aliquot part of the actual amount frozen in the account.
- Period for making the acquisition: the SPAC will have to formalize the acquisition in 36 months, which may be extended for a further 18 months if this is approved by the shareholders' meeting.
- Exception to the obligation to launch a mandatory tender offer:
 - If, as a result of the acquisition or of applying the chosen redemption mechanism, any shareholder obtains, directly or indirectly, a controlling stake in the resulting company (equal to 30% or more of the voting rights), that shareholder will automatically be excluded from the obligation to launch a tender offer.
 - If the SPAC carries out, as a redemption mechanism, a capital reduction by repurchasing its own shares for their redemption, it will have to launch a tender offer for a capital reduction (article 12 of Royal Decree 1066/2007) with the following characteristics:

- Si la SPAC lleva a cabo, como mecanismo de reembolso, una reducción de capital mediante la adquisición de sus propias acciones para su amortización tendrá que formular una opa de reducción de capital (art. 12 del Real Decreto 1066/2007) en los siguientes términos:
 - a. The price for the tender offer must be equal to the aliquot part of the actual frozen amount when the redemption right is exercised.
 - b. The SPAC may, instead of redeeming the acquired shares, approve for them to be given in exchange to shareholders of the acquired company in respect of all or part of the transaction price.
 - c. As a general rule, the creditors' right to object will not exist.
- Specific provisions on the prospectus: the CNMV may require a prospectus if, at the time of the merger with the target company, the transaction falls outside the obligation to publish one under Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017.

This new regime also applies to SPACs listed on a multilateral trading facility.

5. Investment Services Firms

- Investor protection is enhanced, especially in relation to the challenges arising from the digitalization process and the Investment Services Firms (ISF) regime.
- Directive 2019/2034 on the prudential regime for investment firms is transposed, introducing new conduct of business and solvency rules for investment firms.
- The CNMV will be in charge of adapting the new requirements according to the size, nature and complexity of the activities carried out by the ISF.
- In addition, a regime for national investment services firms is created, which may continue to operate as they do at present, but must join the Investor Guarantee Fund, on a proportional basis and adapted to their level of risk. These firms will not be able to provide services in other Member States, whether or not they are members of the European Union.

6. Collective Investment Vehicles

- Law 35/2003, of November 4, on Collective Investment Undertakings is amended in order to improve the competitiveness of the sector and to make further progress in the transposition of directives and adaptation to European regulations.
- The definition of the minimum content of the Key Investor Information Document (KIID) that was contained to date is removed, establishing that it will comply with the provisions of Regulation (EU) 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents relating to PRIIPs and insurance-based investment products.
- Regarding information to unitholders and shareholders of funds and investment companies, the obligation to provide, upon request, the quarterly report is eliminated, and the same reference to Regulation (EU) 1286/2014 is established in relation to the DFI. In addition, the management company or the investment company (if self-managed) may inform its existing clients that there will be an automatic switch to electronic reporting if they do not request the continuation of paper

reporting within eight weeks following the entry into force of the amendment to article 18 of Law 35/2003.

- With regard to management company authorization processes, it is clarified that the internal rules of conduct do not have to be submitted to the CNMV prior to their application, although they will be available to the CNMV whenever it so requires.
- The regime on public intervention in the dissolution of an investment company, management company or depositary is amended, clarifying, inter alia, that (i) cash and financial instruments of CIS may not be distributed or realized for the benefit of creditors of the depositary or any third party to whom the depositary has delegated its functions, in the event of the insolvency of either of them; and (ii) the declaration of insolvency shall not prevent the settlement of subscription, redemption or transfer orders placed by clients prior to the date of the declaration of insolvency.

7. Entry into force and transitional rules

- The Law will enter into force generally twenty days after it is published in the Official State Gazette.
- The inclusion of companies listed on a multilateral trading facility, such as BME Growth, in the rules applicable to regulated markets regarding tender offers and voluntary delisting will only be applicable following the entry into force of the relevant implementing regulations.
- Until the necessary implementing regulations are issued, the provisions currently in force on the securities markets and investment firms will be retained, as long as they do not contradict the provisions in the new Law.

More information:

[Corporate Department](#)

GARRIGUES

Hermosilla, 3

28001 Madrid

T +34 91 514 52 00

info@garrigues.com

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