

Recent key developments in the area of Spanish financial regulation

Prepared by the Regulation and Research Department of the Spanish Confederation of Savings Banks (CECA)

Law 6/2023 on securities markets and investment firms (published in the *Official State Journal* on 18 March 2023)

The goals of this legislation include: (i) making the improvements needed to facilitate the development of the Spanish securities markets in the current competitive environment; (ii) improve the securities markets' body of institutional and technical regulations; and (iii) adapt Spanish law for recent developments in European law, while exercising the alternatives provided for in the various Directives which have to be transposed. Those Directives are: Directive (EU) 2019/2177, Directive (EU) 2020/1504, Directive (EU) 2021/338 (MiFID II Quick Fix), Directive (EU) 2022/2556, Directive (EU) 2019/2034 (IFD) and Directive (EU) 2021/2261.

In broad terms, this new law regulates the following:

- The nature of and legal regime governing Spain's securities market regulator, the CNMV for its acronym in Spanish, its duties, powers and organisational structure.
- The primary securities markets.
- Trading venues (regulated markets, multilateral trading facilities and organised trading facilities), post-trade securities clearing, settlement and registration systems and infrastructures, derivative position limits, issuer reporting requirements, reporting requirements around significant share and own share holdings, and the regimes applicable to takeover bids and to proxy advisors.
- The regime applicable to investment firms, including authorisation procedures, the regime for providing services in the EU and third countries, significant shareholdings, reporting requirements, corporate governance requirements, remuneration policy, and management systems, procedures and mechanisms.
- The regime applicable to data reporting service providers: scope of activity, authorisation procedure, disclosure, communication and data processing requirements, and internal organisation requirements.
- The Investment Guarantee Fund, implementing rules around joining and leaving the insurance scheme and the enforcement of guarantees.
- The rules of conduct applicable to investment firms (customer classification, design and marketing of financial products, suitability and know your client assessments, payments and remuneration for the provision of services; skills and knowledge tests, order execution rules, *etc.*).
- Market abuse regulations.
- The supervisory, inspection and penalty regime; and
- The tax regime governing securities trades.

Among the matters addressed by the new legislation, the following stand out:

- The separation of investment firms' prudential requirements depending

- on their size; a series of additional requirements related with the firms' systemic risks and financial importance; adaptation of the supervisory regime at the national level. The CNMV may permit, underpinned by a report from the Bank of Spain, the application of the CRR regulatory framework to investment firms that are subsidiaries of banking groups that meet a series of requirements in order to facilitate the prudential supervision of these entities related to banks without resulting in a reduction in the investment firms' own funds requirements.
- Creation of a new 'national financial advisory firm' category; such firms will have three months to adhere to the Investment Guarantee Fund. These new companies will not qualify as investment firms so that their initial capital requirements will be lower. To that end, the former category of 'natural person financial advisory firm' is being eliminated; those entities will have nine months to change their form of incorporation and re-register as national financial advisory firms.
 - A reduced administrative burden in terms of documentation and reporting requirements. Specifically, investment firms will not have to comply with the product governance requirements when distributing investments arranged with eligible counterparties. Also, they will be allowed to provide their clients with the required information in electronic format unless a retail client specifically requests a hard copy. Some information requirements are also being waived for services provided to professional clients, unless the latter expressly notify their desire to exercise those rights.
 - Elimination of central securities depositories' obligation to keep an information system for the purpose of supervising securities trading, clearance, settlement and registration. Central securities depositories, financial market infrastructures and participating entities have two years to transition to the new regulatory framework.
 - Extension of the takeover bid regulations applicable to regulated markets to multilateral trading facilities.
 - Regulation of the growth SME market with the aim of making it easier to list on this market in order to raise money.
 - Simplification of the fixed-income securities issuance process and reduction of the fees fixed-income securities issuers have to pay to the CNMV.
 - Reinforced protection of investors against firms offering investment services without the required authorisation, officially categorising the advertising and information breaches that will be supervised by the CNMV.
 - Expansion from two to three months of the deadline for issuing the second six-monthly financial report for issuers whose shares are admitted to trading on a regulated market or other regulated market domiciled in the EU when Spain is the issuer's home market Member State and the annual financial report has not been published in the two months following the end of the annual reporting period.
 - Introduction of financial instruments issued through the market infrastructures based on the distributed ledger technology contemplated in Regulation (EU) 2022/858.
 - Introduction of the measures needed to apply the future Markets in Cryptoassets Regulation (MiCA). Introduction of the requirements and obligations for setting up and registering cryptoassets subject to securities market legislation. As a result, the CNMV will be able to penalise breaches of the obligations and requirements around cryptoassets that are not financial instruments and that are presented as investment opportunities.
 - The penalty regime applicable to breaches of the obligations set down in the EU's Digital Operational Resilience Act (DORA).

- Implementation of the regime governing special-purpose acquisition companies (SPACs). Specifically, itemisation of the mechanisms for reimbursing shareholders and certain company law exceptions applicable exclusively to SPACs. Notably, the new regulations stipulate that SPACs' bylaws must contemplate closing the acquisition agreement for which they were set up within no more than 36 months from the IPO, a period which may be extended by up to but no more than 18 months if agreed at a general shareholder meeting. Once the acquisition or merger has closed, those exceptions will cease to apply.

The new legislation also introduces the following amendments to existing regulations:

- Law 13/1989 (credit cooperatives): establishment of the regime for trading in the shares of the credit cooperatives under Bank of Spain supervision.
- Law 41/1999 (payment systems and securities settlement): definition of the "Spanish system" as the procedures or agreements bound by Spanish law for the settlement of fund transfer orders from a cash account open at the Bank of Spain, ECB or other central bank of an EU Member State whose system is connected to that of the Bank of Spain via the European System of Central Banks.
- Law 35/2003 (undertakings for collective investment): regulating, among other things: (i) replacement of a depository in the event of bankruptcy, licence revocation or suspension; (ii) depository bankruptcies; (iii) public intervention in the dissolution of an investment firm, manager or depository to pass control to the Bank of Spain and FROB; and (iv) an updated key investor information document.
- Royal Legislative Decree 1/2010 (Corporate Enterprises Act): update of the bylaws, public registration, and exceptions applicable to SPACs.
- Law 10/2014 (structuring, supervision, and capital adequacy of credit institutions): introduction of the Bank of Spain supervisory report and changes to ensure consistency with the MiCA Regulation.
- Law 16/2014 (CNMV levies): among other things, the amendments eliminate the levy previously charged for verifying admission to trading requirements for non-equity securities and include 'national financial advisory firms' within the scope of application of some of the CNMV's levies.
- Law 22/2014 (private equity firms and venture capitalists, other closed-end collective investment undertakings and their management companies): update of the following aspects of the regulations applicable to management companies: ancillary services, authorisation requirements, manager replacement, registration in the CNMV's public registers, reporting, audit, and accounting requirements, investor disclosure requirements prior to making investments, infraction notifications, etc.
- Law 5/2015 (facilitation of corporate financing): inclusion of the entities contemplated in the Securitisation Regulation (Regulation (EU) 2017/2402) under the scope of the CNMV's supervisory and penalty regime. The articles regulating legislative breaches have also been amended.
- Law 11/2015 (recovery and resolution of credit institutions and investment firms): introduction of the investment firm concept with respect to those authorised to deal on their own account and/or underwrite or place financial instruments on a firm commitment basis.

The new legislation also repeals the last Securities Market Act (Royal Legislative Decree 4/2015) and some of its amendments (Royal Decree-law 21/2017 and Royal Decree-law 14/2018).

The new legislation took effect 20 days after its publication in the *Official State Journal*, with the exception of certain provisions,

which will take effect later: (i) those related with the MiCA will take effect in conjunction with the associated Regulation; and (ii) those related with the requirements for admitting financial instruments to trading will take effect six months after its publication.

Bank of Spain Circular 1/2023 on the information to be provided to the Bank of Spain regarding covered bonds and other loan securitisation instruments (published in the *Official State Journal* on 2 March 2023)

The purpose of this Circular is to set forth the content, frequency and deadlines for submitting the required confidential statements to the Bank of Spain for issues of covered bonds, mortgage-backed securities and loan securitisation instruments backed by chattel mortgages or pledges without transfer of possession, the liquidity buffer requirements for the cover pool for covered bond programmes; organisation and management of the special registry for the cover pool; and the cover pool monitor.

The Circular applies to credit institutions, branches in Spain of credit institutions authorised in another EU Member State and specialised lending institutions.

The periodical information and confidential statements to be submitted to the Bank of Spain are structured into seven blocks articulated around the following topics:

- Issuance of mortgage-backed securities.
 - Organisation and management of the special cover pool registry; and
 - Cover pool monitor.
- It also amends Circular 4/2017 to repeal the public disclosures related with the issuance of covered bonds and other asset-backed securities related with the mortgage market and Circular 4/2019 to eliminate the information disclosure requirement formerly incumbent on specialised lending institutions that issued ‘internationalisation covered bonds’.
- The Circular took effect on 31 March 2023. The first set of statements to be prepared under the new requirements are those corresponding to the first quarter of 2023, to be sent to the Bank of Spain together with those corresponding to the second quarter of 2023, within the deadline for submitting the latter.

Bank of Spain Circular 2/2023 amending the Risk Information Register Circular (published in the *Official State Journal* on 25 March 2023)

The objectives of the new Circular are:

- Specifying the information to be submitted to the Risk Information Register by reporting entities as a result of certain modifications introduced to reduce the exemptions for individual reporting to the Register with respect to certain smaller transactions contemplated in Ministerial Order ETD/600/2022. As a result, the reporting entities must now report all transactions whose cumulative risk for the entity equals at least 3,000 euros individually (transaction by transaction) to the Risk Information Register.
- Determining the additional information to be submitted to the Risk Information Register to align it with the changes contemplated in the Code of Good Practices

governing the renegotiation of the state-guaranteed loans set forth in Royal Decree-law 5/2021 and the Cabinet Agreement of 10 May 2022, establishing the terms and conditions of the first tranche of the surety facility contemplated in Royal Decree-law 6/2022. Specifically, the financial institutions must flag the transactions availing of the related measures in their accounting and risk management systems: extension of maturity dates; loan transformation into profit-participating loans; or partial loan forgiveness. Those flags must likewise be included in the information submitted to the Bank of Spain's Risk Information Register.

- The Circular introduces certain changes to the Register to align it with the reporting regime contemplated in the AnaCredit Regulation.
- It also makes changes to clarify the information that needs to be provided in respect of certain transactions, simplify how some of the information is provided, introduce the odd additional dimension, and extend the grounds for which certain information is requested.

The new Circular will take effect on 1 July 2023, except for the changes regarding “reportable risks” and “owners and other reportable parties” and the provision on the new requirements regarding the Code of Good Practices (Royal Decree-law 5/2021) and surety lines (Royal Decree-law 6/2022), which take affect the day after its publication.