

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)

Draft Royal Decree on the legal regime governing investment firms and other investment service providers

The purpose of this piece of draft legislation is to transpose Directive (EU) 2019/2034 on the prudential supervision of investment firms and Delegated Directive (EU) 2021/1269 as regards sustainability factors into Spanish law and to complete implementation of the regime applicable to investment service providers following the changes introduced via Law 6/2023 on Securities Markets and Investment Services (“Law 6/2023”). It also repeals Royal Decree 217/2008 on the legal regime governing investment firms and other investment service providers. The public consultation period ended on 28 September.

The most important changes to be introduced include:

- A new prudential framework modifying the initial capital requirements applicable to investment firms (IFs).
- A new framework for national financial advisors that do not qualify as IFs and cannot provide services in other Member States.
- A new regime governing contributions to the investment guarantee scheme (FOGAIN for its acronym in Spanish). Financial advisors will have three months from effectiveness of the new Royal Decree to join the scheme. Those that are already members of the guarantee scheme can sign up for a voluntary gradual alignment system.
- The cross-border investment services regime, distinguishing between cross-border activity within the EU, with requirements similar to the national rules, and cross-border activity with third countries, where additional safeguards are required.
- The IF management systems, procedures and mechanisms by means of: (i) financial requirements; (ii) internal organisational and operational requirements; (iii) internal organisational and operational requirements for IFs engaged in algorithm trading; (iv) internal organisational and operational requirements for IFs that provide direct electronic access; and, (v) internal governance, risk management, remuneration and transparency requirements for large and interconnected IFs.
- New rules of conduct related to inducements. Introduction of the stipulation that a fee, commission or non-monetary benefit derived from the provision of a financial instrument placement service not on a firm commitment basis or the underwriting of financial instruments or placement of financial instruments on a firm commitment basis is designed to enhance the quality of the related service to the client if it provides the latter access to a primary market.
- The integration of the sustainability factors into product governance matters.
- Updated provisions for data reporting service providers to align them with European regulations.

Draft Royal Decree on financial instruments, admission to trading, registration of transferable securities and market infrastructures

The purpose of this piece of draft legislation is to systematise and restructure the existing body of legislation in order to ensure clear and simple capital markets regulations and to implement Law 6/2023. It will also repeal Royal Decree 1310/2005, Royal Decree 361/2007, Royal Decree 878/2015, Royal Decree 1464/2018 and Ministerial Order EHA/3537/2005. The public consultation period ended on 28 September.

In broad terms, this draft legislation purports to address the following:

- Reorganisation of the provisions regarding the regulatory implementation of MiFID II around: (i) the aspects related with financial instruments, representation of transferable securities by means of book entries or via systems based on distributed ledger technology; (ii) the admission to trading on regulated markets of public securities offerings and responsibility for the prospectuses; (iii) the clearing, settlement and registration of transferable securities; (iv) the position limits on the size of a net position in agricultural commodities derivatives and critical or significant commodity derivatives; and, (v) the common provisions applicable to central counterparties and central securities depositories.
- Elimination of central securities depositories' obligation to have an information system for the purpose of supervising transferable securities trading, clearing, settlement and registration.
- Alignment of central securities depositories' oversight and control requirements with European regulations.
- A new definition of a financial instrument to include those issued, registered, transferred or stored using distributed ledger technology or equivalent.

- Elimination of outdated references that are no longer applicable or fail to adequately reflect the reality of the Spanish capital markets.
- New exemptions for financial and non-financial counterparties that are subject to the legal liquidity provision requirement.

Lastly, this future Royal Decree will transpose Directive (EU) 2021/338 as regards information requirements, product governance and position limits to help the recovery from the COVID-19 crisis.

Draft Royal Decree amending Royal Decree 1082/2012 on implementation of the collective investment undertaking Act

The purpose of this draft piece of legislation is to enhance the legal regime governing collective investment in Spain in order to bolster its competitiveness, improve how it functions and introduce adjustments in order to align the Spanish regulations with EU law. It also transposes Delegated Directive (EU) 2021/1270 as regards the sustainability risks and sustainability factors to be taken into account for Undertakings for Collective Investment in Transferable Securities (UCITS) and implements Law 6/2023. The public consultation period ended on 28 September.

The main new aspects put out to consultation are the following:

- Elimination of the requirement to report the identity of the shareholders or owners who surpass or fall below a series of thresholds deemed to mark significant shareholdings to the CNMV on a quarterly basis.
- Introduction of electronic communication by default.
- Development of the procedure regulating expressions of interest when designating a new manager and/or depository to replace a manager and/or depository facing bankruptcy, licence revocation or suspension.

- Introduction of mechanisms to the fee regime to establish ways to guarantee that marketing costs are passed back to the investment fund in the event they are included in the underlying fund management fee.
 - Specification that in the event of dissolution and liquidation of an investment fund, it is possible, while continuing to suspend the investor's right to request a reimbursement, to articulate payments on account of share reimbursements.
 - Elimination of the quantitative limits imposed on undertakings for collective investment (UCIs) regarding investment in financial instruments featuring voting rights of an issuer.
 - Elimination of the 1% liquidity coefficient requirement for UCIs.
 - Adjustment of the minimum investment periods, eliminating the maximum quantitative limit associated with the first time the investor subscribes for shares (which is currently set at one year), and replacing it with a time limit associated with when the hedge fund expects to liquidate its investments.
 - The *pro rata* apportionment of reimbursements is no longer conditional upon settlement at the next reimbursement date but rather the requirement to hold sufficient liquidity.
 - Reduction of the minimum equity required of UCIs to create side pockets when affected by circumstances that impede an asset valuation or sale at fair value to 1%.
 - The introduction of flexibility around the calculation of net asset share values so long as subscriptions and reimbursements can be catered to at least fortnightly.
 - An easing of the requirements for marketing firms to collect share custody and administration fees from investors by eliminating the requirement that the marketing firm and management firm must be from the same group of companies.
 - Reinforcement of the risk diversification limits applicable to UCI management companies by including, in addition to securities issued, all manner of financial instruments and also cash, within the 25% limit on the concentration of exposures to a given entity or entities within the same group.
 - The introduction of sustainability risks into management companies' internal processes, systems and controls.
- Draft Royal Decree implementing the CNMV's administrative powers**
- The purpose of this draft piece of legislation is to regulate the following:
- The official registers the CNMV must set up and maintain.
 - Cooperation with the Bank of Spain, supervisory authorities of other EU Member States, ESMA and supervisory authorities of third countries.
 - The supervision of investment firms.
 - The CNMV's reporting requirements around solvency.
- Lastly, this draft legislation will transpose Directive (EU) 2019/2034 of the European Parliament and of the Council, of 27 November 2019, on the prudential supervision of investment firms into Spanish law. The public consultation period ended on 28 September.