

**New Law on Securities
Markets and Investment
Services**

(Law 6/2023 of 17 March)

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NEW LAW ON SECURITIES MARKETS AND INVESTMENT SERVICES (LAW 6/2023 OF 17 MARCH)

On 18 March 2023, Law 6/2023 of 17 March on Securities Markets and Investment Services (the "LMVSI", as per its Spanish acronym) was published in the Official State Gazette (or "BOE"), replacing legislation currently in force (Royal Legislative Decree 4/2015 of 23 October, approving the revised text of the Securities Market Law).

The LMVSI, except for certain specific provisions, will enter into force 20 days following its publication in the BOE, i.e., on 7 April 2023. In the meantime, the LMVSI will be implemented by three royal decrees, expected to be approved and published in the coming days.

1. DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTO-ASSETS

The LMVSI provides a legal framework for securities representation by means of distributed ledger technologies ("DLTs"), applying Regulation (EU) 2022/858 on the pilot regime for market infrastructures based on distributed ledger technology, and amending the definition of "financial instrument" to state with certainty that such securities can be issued by means of DLTs.

The LMVSI has also been designed to adapt to the future Regulation on crypto-asset markets, amending Directive (EU) 2019/1937 ("MiCA"), when it comes into force. The National Securities Market Commission (or "CNMV") and the Bank of Spain will immediately have the necessary supervisory powers to ensure investor protection and financial stability in this field.

Specifically, the CNMV will be the supervisory authority on the issuance, offer and acceptance to trading certain crypto assets that are not considered financial instruments, and the law provides for the applicable offences and penalties regime. On the other hand, the Bank of Spain will supervise, control, and impose any penalties on issuers of e-money tokens and asset-backed tokens.

2. ISSUER-RELATED DEVELOPMENTS

2.1. Admission of fixed income/non-equity securities to the regulated market

The LMVSI provides that the governing body of the regulated fixed-income market (AIAF) will monitor compliance with the admission requirements of non-equity securities, although the CNMV will continue to review and approve the prospectus.

2.2. Special purpose acquisition companies or SPACs

For the first time, special purpose acquisition companies (or "SPACs") have been provided with a specific legal framework through an amendment of the Spanish Companies Act ("LSC"), by including a new Chapter in Title XIV. These are corporate vehicles created to acquire all or part of another listed/unlisted company/companies. A maximum period of 36 months is set to

formalise the acquisition, which may be extended by a further 18 months if approved by the Shareholders' Meeting.

SPACs must set out a shareholder redemption mechanism, consisting of (i) a shareholder's right of withdrawal, to be provided for in the articles of association, (ii) the issuance of redeemable shares, or (iii) a capital reduction by repurchasing its own shares for redemption.

2.3. Takeover bids

Takeover bids and delisting buyback takeover bids are extended to companies listed on multilateral trading facilities. Among the circumstances that trigger the obligation to launch this process, there is a specific provision for the event where control is obtained by means of a shareholders' agreement or any other type of agreement.

Further provisions are foreseen for cases where the security is listed on another trading venue within the EU, in which the CNMV may relieve a party of the obligation to launch said takeover bid.

3. DEVELOPMENTS FOR INVESTMENT SERVICES FIRMS

3.1. “Prudential” requirements

The prudential regime applicable to investment services firms (“ISFs”), as set out in Directive 2019/2034 (“**IFD**”) and Regulation 2019/2033 (“**IFR**”), is included in the LMVSI. ISFs are classified into three broad categories (Class 1, 2 and 3), depending on their size, purpose, scale, and the complexity of their business activities. Depending on their category, the requirements regarding share capital and internal organisation may be stricter or more lenient. Therefore, Class 1 ISFs will remain under the banking prudential regime (CRD/CRR), and those with consolidated assets exceeding €30 billion will have to become a credit institution.

3.2. Code of conduct

Directive 2021/338 (“**MiFID Quick Fix**”) is transposed, incorporating, among others, (i) the exemption from product governance obligations when they are distributed exclusively to eligible counterparties; (ii) electronic platforms as the default means of communication with the client; and (iii) simplifying reporting requirements for professional clients and eligible counterparties.

3.3. National Financial Advisory Firms

A new category of national financial advisory firm has been created, which can be either an individual or a legal entity, but is considered to be an ISF, and therefore cannot hold an EU passport. Regular advisory firms are required to have higher initial capital than these firms and must be legal entities. National financial advisory firms are obliged, in any case, to join the Investment Guarantee Fund (“**FOGAIN**”).

4. DEVELOPMENTS IN COLLECTIVE INVESTMENT, VENTURE CAPITAL AND CLOSED-END INVESTMENTS

4.1. Amendments to the Collective Investment Regime (Law 35/2003)

Regarding the regime for collective investment institutions (“**CII**s”), asset separation is reinforced (financial instruments and cash) in the event of insolvency of the depository.

On the other hand, the Key Investor Information Document (“**KIID**”) drafted in accordance with Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (“**PRIP**s”) is included in the scope of Law 35/2023, excluding prior verification by the CNMV.

The representation of shares and units of CII can also be issued and represented using DLT technology.

The reform amends the procedure for replacing CII management companies and the depository in the event of their insolvency, revocation, or suspension.

Finally, it provides that communication with unitholders and shareholders will automatically be digital, as only retail customers may request paper copies of communications.

4.2. Amendments to the closed-end collective investment scheme (Law 22/2014)

The Law allows, once again, the option for closed-end collective investment institutions’ management companies (“**SGEIC**s”) to also provide advisory services, as this was an activity that had been recently removed.

As with the case of CII, the law has been amended to mention the KIID, drawn up in accordance with the PRIIP Regulation. The information to be provided to investors for marketing is also clarified in further detail.

5. NEW DEVELOPMENTS REGARDING PENALTIES

For the sake of clarity, the LMVSI systematised offences depending on the specific nature of the prohibited behaviour. Thus, the LMVSI’s penalties regime includes an article for each EU Regulation from which the infringing conduct arises, in order to better identify each offence. The limitation period on serious infringements has also been reduced from five to four years.



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