RocaJunyent Reports

Commercial Law Department
16 September 2022

On 12 September 2022, the Securities Markets and Investment Services Bill was published (the "**Bill**"). Once approved by Parliament, it will replace the current Consolidated Text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October (the "**Securities Market Act**"). The main developments are summarised below.

Cryptoassets

- Considered a financial instrument
  - The definition of a financial instrument now includes those instruments that are issued using distributed ledger technology ("**DLT**") or other similar technologies.
- Representation and registration:
  - The provisions relating to book entry securities shall apply.
  - It must be ensured that DLT systems (i) ensure the integrity and immutability of the records and (ii) allow the identification of the holders of the rights and the nature, characteristics and number of tradeable securities held.

- The issuing document must include the information needed to identify the integrated securities.

- <u>Supervision and penalties</u>

  - Entities subject to the administration of the inscription and registration of tradeable securities are subject to the CNMV's (*Comisión Nacional del Mercado de Valores* [National Securities Market Commission]) monitoring, inspection and penalties regime. The CNMV is also designated as the competent authority to supervise compliance with the Cryptoasset Regulations and as the information coordination and exchange authority.

  - The following, among others, are considered serious/very serious violations, (i) breaches of obligations related to the issuance and public offering of Cryptoassets, (ii) breaches of obligations related to dossiers referring to assets, (iii) breach of obligations of Cryptoasset service providers, (iv) market abuse in relation to Cryptoassets and (iv) lack of cooperation by central counterparty entities.

Securities issuers

- <u>Admission to trading at the request of third parties</u>

  - They may be admitted to trading without the consent of the issuer when they have been admitted in a regulated market of another Member State.

- <u>Simplified debt instrument intake procedure</u>

  - The governing body of each market will be responsible for verifying the requirements rather than the CNMV.

SPACs

  - *Item:* They are defined as companies that are accepted for trading in a regulated market or MNS, without prior activity and with the sole objective of acquiring all or part of another company.

  - *Reimbursement*: It must foresee a reimbursement mechanism in favour of all shareholders in the event that the Board agrees to an acquisition, which may consist of (i) a right of separation, (ii) the issuance of redeemable shares or (iii) a capital reduction.

  - Cases where a shareholder reaches a controlling interest as a result of the reimbursement are exempt from the obligation to formulate a takeover bid. Nor will the legal self-portfolio limit apply.

- The corporate bylaws must provide for a maximum term of 36 months (extendable 18 months by the Board) to formalize the acquisition.

Takeover bids

- The takeover bid regime is extended to companies domiciled in Spain whose shares are incorporated into an MNS, a situation that currently lacks a specific regulation.
- The Bill provides that those securities that are admitted in another EU trading centre will be exempt from the obligation to buyback.
- Agreements by holders of at least 30% of the voting rights that imply a concerted action, whether para-social or of *any nature* are considered cause for a takeover bid.

Investment Service Companies

- *EAFN:* The new National Financial Advisory Company [*Empresa de Asesoramiento Financiero Nacional*] is regulated, they will not be considered investment service companies, but will be subject to the same rules but with lower requirements and authorized to operate only in Spain.
- *Non-national EAFs:* Non-national financial advisory companies that are legal entities may be considered ISCs.

Central Counterparty Entities

- *DLT*: Transactions will be settled through DLT systems.
- *Recovery Plan:* They must include in their regulations a recovery plan with the measures to be adopted in the event that there is a deterioration of their financial situation or there is a risk of breaching essential requirements.