RocaJunyent Informs

Commercial Law Department
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On March 18 2023, Law 6/2023, of March 17, on Securities Markets and Investment Services, was published in the BOE, which will enter into force 20 days after its publication in the BOE, specifically on April 7 2023, thus replacing the LMV in force since 2015.[1]

The objective of the LMV is to modernize the regulation of capital markets and their operation through transposition into national regulations of recent European Directives on financial markets. Regulation (EU) 2022/858 on a pilot regime of market infrastructures based on Decentralized Registry Technology ("DTR") is particularly relevant.

[1] Article 63 on the requirements relating to the admission of financial instruments for trading shall not enter into force on 7 April 2023. The same will happen with Articles 307 and 323, which will come into force at the same time as the Regulations of the European Parliament and of the Council relating to cryptoasset markets, amending the EU Directive (2019/1937), which will come into force in 2024 (MiCA Law).

Main new developments of the legislation:

Cryptoassets

- Financial instruments are recognized as those issued under **DTR,** provided that they comply with the characteristic elements defined in Article 2 of the new law and MiFID II regulations. The Capital Companies Act is amended in this regard, allowing the representation of shares and bonds issued by systems based on **DTR**; [2]

- They must: (i) guarantee comprehensiveness, identification and immutability factors of the securities issued (ii) directly or indirectly identify the holders of the voting rights on negotiable securities, the nature, characteristics and number of securities;

- A document of issue must be prepared and deposited with the entity or entities responsible for the administration of **DTR**;

- The trading of the securities, their transfer and all effects shall be carried out within the register of **DTR**, including the establishment of any real charge or right constituted on the securities registered in **DTR**;

- The entities in charge of recording securities must develop separate “Continuity” and “Contingency” plans that include data management procedures and systems in case of a system failure;

- In the parliamentary processing of the September Draft, it was established that the obligations of the central depositories of securities are limited to those established by the European law on depositaries and their development rules. The provision for the declaration of bankruptcy of an entity in charge of carrying out the registration and administration of the representation of securities negotiable through systems based on distributed registration technology is incorporated.

Issuance of fixed-income securities:

- The process of admission for trading fixed income securities is modified and prior verification by the CNMV is no longer necessary, with the AIAF governing body becoming competent;

- However, the CNMV will continue to intervene when the approval of an offer or admission brochure is required.

[2] In the parliamentary proceedings, the fungible nature of the negotiable securities represented through DTR -based systems was specifically specified.

Investment service companies:

- National Financial Advisory Companies (EAFN) are created which: (i) may be individuals or legal entities with the capacity to provide investment advisory services, (ii) they must adhere to the investment guarantee fund (FOGAIN) with a contribution system that is proportional and adapted to their income level, (iii) they may not provide services with a European passport outside the national territory, and (iv) will not have to comply with the current solvency and own resources requirements of the ESI.

OPAs

- The regime applicable to Regulated Markets is extended to Multilateral Negotiation Systems (MSNs);
- The conclusion of pacts of any nature by holders with at least 30% of voting rights that entail concerted action is extended as a mandatory assumption of OPA;
- The CNMV is authorized under the new wording to waive the obligation to formulate OPAs for companies that have agreed to voluntarily exclude their shares from trading, provided that, at that time, the security is listed at another European trading center.

SPACs:

- Modification of the Capital Companies Act to specifically regulate SPACs by admitting them as a new type of company that may be admitted for trading in a regulated market or SMN.
- The bylaws must establish a period of 36 months for the acquisition of the target company and 18 months may be extended by decision of the general meeting of shareholders.
- They must have a reimbursement mechanism in place in the event that the Board agrees to an acquisition consisting of a right of separation, the issuance of redeemable shares or the reduction of capital.
- To enable the reimbursement, the obligation to formulate OPA is exempted when a shareholder reaches a controlling share position as a result of the reimbursement and the maximum treasury limit (10%) is eliminated.