

### **SPANISH SANDBOX REGULATORY REGIME: END OF PUBLIC CONSULTATION**

The Spanish Government is still working on a future “law relating to measures for the digital transformation of the financial system”. Although its name suggests a more disruptive legal response to the digital transformation environment (e.g. blockchain, etc.), the main aim of the bill is to build a new regulatory for the digital innovation of the financial system by creating a regulatory sandbox similar to the existing regime in the UK.

The financial sector was asked to provide its comments on the first draft of the project by 7 September 2018. Those comments are now being analysed by the authorities in order to generate a revised draft of the bill.

Based on the current draft, the Spanish sandbox regime would function as follows:

- In order to join the regime, projects need to contribute to technology-based financial innovation, which is defined as innovation that could result in new business models, applications, processes or products for the financial markets; the supply of financial or complementary services, or the improvement of the performance of public functions in the financial field.
- Applications for the sandbox follow a one-stop shop principle. The Spanish General Secretariat of the Treasury and International Finance will receive all applications and review them together with the relevant authority according to the nature of the project (e.g. insurance, financial instruments or banking services).
- Once the project is approved, the developer and the supervisory authority will draft a test protocol defining the scale, duration and resources needed for the project, a guarantee scheme for the liabilities, privacy policies, etc.

- Clients participating in the tests will be informed of the project's content, possible risks and the withdrawal scheme (which, according to the current draft, is free to be exercised at any moment), and must agree to participate by providing written and informed consent.
- The tests may be cancelled by the supervisory authorities (a) if the law, protocol or good financial practices are infringed or (b) if the supervisory authorities detect apparent deficiencies or possible risks regarding financial stability, the integrity of the financial markets or client protection. The developer may also suspend the project due to (a) technical reasons or any other motive which may interfere with the sustainability of said project or when (b) the expected goals have already been fulfilled.
- The regime also includes reports to the supervisory authorities and the possibility to apply for the required regulatory licence using a fast-track procedure.

For the full text of the draft, please refer to:

[http://www.mineco.gob.es/stfls/mineco/ministerio/participacion\\_publica/audiencia/ficheros/ECO\\_Tes\\_180711\\_AP\\_Ley\\_transformacion\\_digital\\_sistema\\_financiero\\_fin.pdf](http://www.mineco.gob.es/stfls/mineco/ministerio/participacion_publica/audiencia/ficheros/ECO_Tes_180711_AP_Ley_transformacion_digital_sistema_financiero_fin.pdf)

## **NEW CNMV COMMUNICATION IN RELATION TO ICOs**

On 20 September 2018, the National Securities Market Commission (Comisión Nacional del Mercado de Valores, CNMV) published new guidelines in relation to ICOs, in addition to the one published on 8 February 2018. In February's communication, the CNMV provided initial guidelines regarding the different ways to market cryptocurrencies and, in particular, the types of tokens that would fall under the definition of security, and as such could be subject to the rules on issuance, marketing and negotiation of securities in Spain.

These new guidelines focus on three main areas:

### **Clarification on tokens that will be treated as security**

In its communication in February 2018, the CNMV stated that a token may qualify as a security, inter alia, in the event that "it gives access to services or goods/products which are being offered, making a direct or indirect reference to the potential benefit the investor could receive as a consequence of the revaluation or the possibility of trading in markets which are equivalent to regulated markets".

Following international trends, September's communication clarifies that tokens shall not be considered security in scenarios in which it is not reasonable to predict a relationship between the revaluation or profitability forecasts of the token and the evolution of the underlying project or business.

### **Level of intervention of regulated firms in the process**

Normally, the CNMV would not expect the issuer to use a regulated custodian or a firm authorised to carry out placement of financial instruments in an ICO.

If the thresholds for public offers and thus drafting a prospectus are met, the CNMV commits to take the principle of proportionality into account, in order to minimise the complexity and scope of the prospectus as much as possible.

Even if the thresholds for public offers are not met (and no prospectus is formally needed), if the ICO is being addressed/advertised to retail investors, a regulated entity shall supervise the process and, in particular, the level of information to be shared with end-investors. The guidelines clarify the scope of such supervision.

### **ICO trading in regulated exchanges in Spain**

Considering that Spanish law requires securities to be represented by book entries in order to be listed in a regulated stock exchange, the CNMV's current position underlines that trading security tokens in Spanish regulated markets, MTFs or OTFs does not appear to be possible.

However, the CNMV recognises that if the tokens were to be traded in another country, those limitations would not apply, and they would be subject to the regulations in place for the relevant country.

For the full text of the guidelines please refer to:

<http://cnmv.es/DocPortal/Fintech/CriteriosICOs.pdf>

<https://www.cnmv.es/portal/verDoc.axd?t={9c76eef8-839a-4c19-937f-cfde6443e4bc}>

## MiFID II IMPLEMENTATION IN SPAIN

Considering the delay in implementing MiFID II in Spain and the EU Commission court actions in this regard, the Spanish Government has not waited for a full Parliament approval process to complete the implementation of MiFID II in Spain. On 28 September 2018, the Spanish Government passed Royal Decree-Law 14/2018, whereby the Securities Market Act is amended in order to reflect the MiFID II provisions that need to be regulated with “the status of the law”.

This new Royal Decree Act focuses on adapting to the Directive 2014/65/EU and the Commission Delegated Directive 2017/593/EU, with regard to safeguarding financial instruments and funds belonging to clients, product governance and inducements. However, some regulations still need to be developed in relation to several points.

One of the key areas that still needs developing relates to cases in which inducements (in particular, rebates) can be received by investment service providers. The Royal Decree-Law does not go beyond MiFID II authorised examples and instead grants the CNMV special authorisation to ultimately provide a closed list of accepted scenarios for receiving these inducements.

For the full text of the Royal Decree-Law, please refer to:

<https://www.boe.es/boe/dias/2018/09/29/pdfs/BOE-A-2018-13180.pdf>

For further information:

**Paula De Biase**

Head of Financial Services Practice

[pdebiase@perezllorca.com](mailto:pdebiase@perezllorca.com)

+34 91 423 67 37

The information contained in this Briefing is of a general nature and does not constitute legal advice. This Briefing was drafted on 9 October 2018 and Pérez-Llorca does not undertake any commitment or assume any duty to update or review its content.