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## New Securities Market Law: developments concerning debt issuances

Law 6/2023, of 17 March, on Securities Markets and Investment Services (the “SML”), constitutes the new framework law for securities markets, repealing Royal Legislative Decree 4/2015, of 23 October, approving the consolidated text of the Securities Market Law (the “CTSML”), which in turn was the successor to Law 24/1998, on Securities Markets.

This Legal Briefing analyses the latest developments in relation to debt issuances.

### 1. Securities supported by blockchain or similar technology

One of the main developments of the SML is its application to financial instruments that are issued, recorded, transferred or stored using distributed ledgers or other similar technologies.

Although the SML provides for the need for subsequent regulatory development in relation to the legal regime of these instruments, it has updated the regulation of transferable securities in order to adapt the current regime to the possibility that they may be based on such technologies.

Developments in relation to the above include updates on issues such as recording, transfer or the form of representation of these types of securities, all of which are inspired by the current book-entry regime.

With regard to the form of representation, transferable securities may be represented by book-entry or by means of certificates, as in the past, or, in the future, also by systems based on distributed ledger technology. The major development in this area is that securities to be traded on trading venues<sup>1</sup> may be represented not only by book-entry as at present, but also by systems based on distributed ledger technology within the framework of EU Regulation 2022/858 of the European Parliament and of the Council of 30 May 2022.

The regime provided for in the SML will be applicable when the terms and conditions of the relevant securities provide for this or, in the absence of an express mention, when the issuer has its registered office in Spanish territory or when the sole entity responsible for the administration of the registration and recording of the securities in the system designated by the issuer has its registered office in Spanish territory.

The SML therefore provides legal coverage for issuances of securities supported by blockchain or similar technologies, so it is to be expected that there will be a progressive increase in issuances of these types of securities which, to date, have been rather anecdotal.

### 2. Primary markets for transferable securities

There are few new developments in this area. In an effort to systematise:

- (i) the SML clarifies that promissory notes with a maturity of less than 365 days will be considered transferable securities, although, in line with the Prospectus Regulation (Regulation (EU) 2017/1129), the publication of a prospectus will not be required for a public offering or admission to trading; and

<sup>1</sup> “Trading venues” is the term used by the SML to refer collectively to regulated markets, multilateral trading facilities and organised trading facilities.

- (ii) the SML incorporates certain aspects of the regulation of organised trading facilities contained in Royal Decree-law 21/2017, of 29 December, on urgent measures for the adaptation of Spanish law to European Union securities market regulations (“**Royal Decree-law 21/2017**”) and clarifies, among other aspects, that the exemption from the requirement to execute a public deed for debt issuances of Spanish companies will also apply to securities to be admitted to trading on an organised trading facility established in Spain.

### 3. Admission of financial instruments to trading on regulated markets

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The SML includes a number of developments in relation to the procedure for admitting financial instruments to trading on regulated markets.

#### 3.1. Verification of requirements

The main change introduced by Article 63 of the new SML, which corresponds to the former Article 76 of the CTSML, is that the task of verifying the admission requirements for non-equity securities will be attributed to the regulatory body of the corresponding regulated market, and not to the Spanish National Securities Market Commission (using the Spanish acronym, the “**CNMV**”), as was the case until now. The task of verifying the requirements for admission of equity securities will continue to be the responsibility of the CNMV, as in the past.

This creates a previously non-existent dissociation between the task of verifying the requirements for admission of non-equity securities (now entrusted to the regulatory body of the corresponding regulated market) and the task of approving the prospectus when this is necessary, which is, of course, the responsibility of the CNMV.

Therefore, the relevant regulatory body for the regulated market will be responsible for verifying:

- (a) the suitability of the issuer (including, inter alia, verifying that the issuer is validly incorporated);
- (b) the suitability of the securities (including, inter alia, verifying that they are properly represented, that they are freely transferable and that the total amount of the issuance for which admission is sought complies with the minimum requirements); and
- (c) compliance with reporting obligations (i.e. primarily the filing of the issuer’s relevant financial statements).

As a result, the Seventh Final Provision of the SML amends Law 16/2014, of 30 September, which regulates CNMV fees, eliminating from its Articles 9 and 10 any allusion to those fees derived from the verification of the requirements for admission of non-equity securities.

As stated in the Explanatory Memorandum of the Draft Royal Decree on financial instruments, admission to trading, registration of transferable securities and market infrastructures (the “**Draft Royal Decree**”), which at the date of approval of the new SML remains in draft form, the rationale for this change lies in the need to improve the competitiveness of the Spanish fixed income market, as well as to avoid duplication of functions between the CNMV and the regulated market’s regulatory body. This will allow the CNMV, as the Draft Royal Decree explains, “*to concentrate its supervisory efforts on checking the prospectus of the issuances*”<sup>2</sup>.

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<sup>2</sup> However, it should be noted that the CNMV’s Advisory Committee noted in its comments on the preliminary draft of the SML dated 26 May 2021 that the authority to verify the requirements for admission to trading on a regulated market should remain with the CNMV.

### 3.2. Admission to trading in Spain by a third party other than the issuer of securities already admitted to trading in another Member State

The articles of the SML restore the possibility (of European origin) for a transferable security previously admitted to trading on a regulated market in another Member State to be admitted to trading on a Spanish regulated market without the issuer's consent, with the issuer having to be informed of this circumstance, and without the issuer being obliged to provide the information that may be required by the market to verify compliance with the admission requirements.

### 3.3. Regulatory development

As with the previous legislation, the new Article 63 of the SML includes the need for subsequent regulatory development of the requirements and procedures for the admission of securities to trading on regulated markets (to date, this was largely contained in Royal Decree 1310/2005, of 4 November, partially implementing Law 24/1988, of 28 July, on Securities Markets in relation to the admission of securities to trading on official secondary markets, public offerings for sale or subscription and the prospectus required for such purposes (“**RD 1310/2005**”).

The need for this development is evident, since, as the Draft Royal Decree states, the SML is configured as “*framework law regulating the basic elements*”, entrusting the regulations with the development of this basic framework. This should “*ensure sufficient flexibility and legal certainty for future regulatory changes, both at a national and EU level*”.

The Draft Royal Decree provides for the repeal of, among others, (i) Royal Decree 1310/2005 and (ii) Royal Decree 878/2015, of 2 October, on clearing, settlement and registration of transferable securities represented by book entries, on the legal regime of central securities depositories and central counterparties and on transparency requirements for issuers of securities admitted to trading on an official secondary market. The Draft Royal Decree has updated and consolidated the content of these (and other) Royal Decrees.

## 4. Periodic disclosure obligations of issuers

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Until now, issuers whose shares or debt securities were admitted to trading on a regulated market or on another regulated market domiciled in the European Union, where Spain is the home Member State, had to<sup>3</sup> publish and disseminate the following:

- (i) an annual financial report and the annual accounts audit report within a maximum of four months after the end of each financial year;
- (ii) a half-yearly financial report covering the first six months of the financial year (the first half-yearly report) no later than three months after the end of the relevant period; and
- (iii) additionally, in the event that the annual financial report has not been made public within two months of the end of the reporting period, a second half-yearly financial report covering the twelve months of the financial year (the second half-yearly financial report) within two months of the end of the reporting period at the latest.

The only noteworthy development in this area is that the SML has extended the deadline for the submission of the second half-yearly financial report by issuers of securities obliged to do so from two to three months.

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<sup>3</sup> Unless exempt (e.g. issuers exclusively issuing debt securities admitted to trading on a regulated market with a unit value of at least 100,000 euros).

Although the development introduced by the SML unifies the maximum deadlines for the publication and dissemination of the first and second half-yearly report, it does not amend in the same terms the deadline for exempting this requirement in the event of early publication of the annual report.

## 5. Entry into force

Most of the provisions of the SML will enter into force 20 days after it is published in the Spanish Official State Gazette (using the Spanish acronym, “**BOE**”).

However, Article 63 (the article setting out the requirements relating to the admission of financial instruments to trading discussed in section 3 above) will enter into force six months after the publication of the SML in the BOE.

Moreover, the SML clarifies that the current rules on securities markets and investment services will remain in force until the corresponding implementing regulations are issued (insofar as they do not contradict the provisions of the SML).

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