
Iberian Financial Newsletter

Banking and Financial Institutions

July – September 2022



Spain

- > Securities markets and collective investments

Portugal

- > Banking
- > Capital Markets



SPAIN

Securities markets and collective investments

Legislation

Law 18/2022, of 28 September, on the creation and growth of companies. [Link](#)

Law 18/2022, of September 28, on the creation and growth of companies (known as the “*Crea y Crece Law*”) was published on September 29, 2022 in the Spanish Official Gazette.

One of the purposes of this Law is to facilitate the distribution of Spanish private equity vehicles (*entidades de capital-riesgo* (“**ECR**”)) among retail investors. In particular, ECR may be distributed to retail investors when they make their investment on the basis of a personalized recommendation (under investment advice subject to MiFID), provided that, if their financial assets do not exceed EUR 500 000, the investment in the PE Fund amounts to at least EUR 10 000 and does not represent more than 10% of such financial assets.

Additionally, a new category of closed-ended funds (*entidades de inversión colectiva de tipo cerrado de préstamos*, “**EICCP**”) is included. EICCP may grant loans or invest in loans, credits and receivables. However, no specific tax regime has been approved for EICCP.

The Law will enter into force on October 19, 2022.

Draft regulation

Draft Bill of the new Securities Markets and Investment Services Law. [Link](#)

This Draft Bill provides the basic legal framework of the Spanish securities market and will replace the current consolidated text of the Securities Market Law.

The Draft Bill amends the Spanish investment firms (*Empresas de Servicios de Inversión – ESIS*) regulation to adapt it to the new EU regulatory framework (mainly Directive (EU) 2019/2034, “IFR”), which establishes different prudential and supervisory requirements for these entities depending on their size, systemic risk and importance.

It also provide two separate regimes for Spanish investment advisors:

- Spanish advisors intending to operate on a cross-border basis in other EU countries will have to comply with certain capital requirements (e.g. to have a minimum share capital of EUR 75 000)



and other organization and prudential requirements. These advisors will remain called “*empresas de asesoramiento financiero*” (EAF).

- Advisors that do not operate on a cross-border basis may opt for the new regime of “*empresa de asesoramiento financiero nacional*” (EAFN), which will cease to be considered as investment firm. EAFN will not be subject to capital requirements. Agents of EAFN may only promote the services of the EAFN, but not provide advice to end clients.

Additionally, the Draft Bill also includes provisions of the future EU Directive that will facilitate the implementation of the so-called “Digital finance package”: the EU Regulations on markets in crypto-asset (MICA Regulation), market infrastructures based on distributed ledger technology (DLT) (Regulation (EU) 2022/858) and digital operational resilience (DORA Regulation). In particular, securities may be represented by means of DLT-based systems, either by book entry or certificates.

It is expected that the Draft Bill is approved during the first quarter of 2023.

Supervision criteria

Public statement published by the CNMV on the forthcoming implementation of the amendment to Delegated Regulation (EU) 2017/565 as regards the consideration of sustainability preferences of clients in the suitability assessment. [Link](#)

On July 18, the CNMV published a statement concerning the implementation of the Commission Delegated Regulation (EU) 2021/1253, amending Commission Delegated Regulation (EU) 2017/565 as regards the consideration of sustainability preferences of clients in the suitability assessment.

The CNMV draws the attention to the fact that, on August 2, 2022, the obligations of the Regulation (EU) 2021/1253 would start to apply. Accordingly, banks and investment firms should have adapted their systems and processes so that they are capable of asking their clients the appropriate questions, when performing a suitability test, to identify their sustainability preferences.

The Statement also notes that ESMA is currently reviewing the Guidelines on certain aspects of the MiFID II suitability requirements with the aim of including the integration of a client’s sustainability preferences in the suitability assessment process. The CNMV will intend to include the guidelines, once they come into force, in its supervision procedures.

Such Guidelines, which have made available for public consultation, may be taken as a general reference by the entities in the implementation process.



PORTUGAL

Banking

Legislation

Instruction 15/2022 – Official Bulletin 9/2022, Supplement of September 28, 2022. [Access Link](#)

Amending Instruction 7/2021 insofar as it concerns the accompanying elements for requests for authorization as members of management and supervisory bodies, holders of key control functions, and managers of branches established in countries that are not EU Member States, particularly the questionnaire requested for this purpose, which is available on the IMAS Portal.

Instruction 14/2022 – Official Bulletin 8/2022, Supplement of September 1, 2022. [Access Link](#)

Publishing, for the first quarter of 2022, the maximum rates to be applied in consumer credit agreements under Decree-Law 133/2009 of June 2.

Bank of Portugal public consultation 6/2022 of September 2, 2022. [Access Link](#)

The Bank of Portugal launched a public consultation until October 17, 2022, on its draft instruction for the communication of information to consumers regarding the signing of credit agreements.

Bank of Portugal public consultation 5/2022 of August 9, 2022. [Access Link](#)

The Bank of Portugal launched a public consultation until September 21, 2022, on its draft instruction defining the regulatory framework applicable to payment institutions and electronic money institutions, revoking Instruction 27/2009 and Instruction 14/2014.

Instruction 13/2022 – Official Bulletin 7/2022, 2nd Supplement of August 5, 2022. [Access Link](#)

Regulating the reporting of statistical information to the Bank of Portugal for compiling securities statistics on securities portfolios, and, effective from January 31, 2023, revoking Bank of Portugal Instruction 31/2005.

Bank of Portugal press release of August 1, 2022. [Access Link](#)

On the supervision of credit intermediaries, which resulted in the authorization of 91 credit intermediaries being revoked.



Circular CC/2022/00000013 – Official Bulletin 7/2022, Supplement of July 28, 2022. [Access Link](#)

Announcing, after the release of the Financial Action Task Force (“FATF”) statements (June 2022 plenary meeting), the adoption of countermeasures commensurate with the very high risk of money laundering and terrorist financing in respect of the Democratic People’s Republic of Korea (North Korea) and the Islamic Republic of Iran and highlighting the publication of the “FATF Statement on the Russian Federation” on June 17, 2022.

Decree-Law 43/2022 – DR 126/2022, Series I of July 1, 2022. [Access Link](#)

Amending the operation rules of Banco Português de Fomento, S. A.

Capital markets

Legislation

Circular of July 1, 2022. [Access Link](#)

On the legal regime of covered bonds.

Circular of July 1, 2022. [Access Link](#)

Updating the June 17 Circular on the deadline for the obligation to issue electronic invoices for micro, small and medium-sized companies when they are public procurement co-contractors, extending it to January 1, 2023.

Regulation 7/2022 –DR 165/2022, Series II of August 26, 2022. [Access Link](#)

Relating to the prudential supervision of investment firms and their recovery plans and amending CMVM Regulations 2/2007, 1/2020 and 9/2020, revoking CMVM Regulation 6/2018 and partially revoking CMVM Regulation 1/2011.

Regulation 6/2022 –DR 155/2022, Series II of August 11, 2022. [Access Link](#)

Amending CMVM Regulation 3/2018 of August 28, which aims to define the minimum knowledge of employees of financial intermediaries that provide investment advisory services or portfolio management services on behalf of others, or that provide information to investors on financial products and investment services (whether main or auxiliary), as well as of independent advisors, regulating the required professional qualifications and skills.



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