

THE NEW SPANISH SECURITIES MARKETS AND INVESTMENT SERVICES ACT: MAIN NOVELTIES FOR SPANISH FIXED-INCOME PRIMARY MARKETS

The Spanish Securities Markets and Investment Services Act introduces changes to the listing process for non-equity securities and a new legal regime for the representation or registration of negotiable securities by means of distributed ledger technology ("DLT") systems ("**DLT Securities**").

INTRODUCTION

On 18 March 2023 the new law governing Spanish securities markets and investment services (*Ley 6/2023, de 17 de marzo, de los Mercados de Valores y de los Servicios de Inversión* (the "**Spanish Securities Markets and Investment Services Act**")) was published in the Official State Gazette and will enter into force on the 20th day following its publication (i.e. on 7 April 2023), except for article 63 (which relates to the listing process and will enter into force within six months) and articles 307 and 323 (which will enter into force at the same time as the Regulation on markets in crypto-assets ("**MiCA**")).

The Spanish Securities Markets and Investment Services Act replaces the previous revised text dating from 2015 and adapts the financial legal framework to new technological and economic realities, such as digitisation, new financing instruments and markets for SMEs. At the same time, it incorporates in a single text certain European directives and measures necessary to apply recently approved European regulations (such as the EU pilot regime Regulation¹ and MiCA).

CHANGES TO THE LISTING PROCESS FOR NON-EQUITY SECURITIES

Listing on a regulated market currently requires prior verification by the Spanish Securities Market Commission (*Comisión Nacional del Mercado de Valores*) (the "**CNMV**") and approval of the listing by the governing body of the relevant market (the managing entities (*sociedades rectoras*) of the Spanish stock exchanges in the case of equity securities and the governing body of the AIAF Fixed Income Market ("**AIAF**") in the case of non-equity securities).

The Spanish Securities Markets and Investment Services Act changes the listing process for non-equity securities so that prior verification by the CNMV

Key issues

- Prior verification by the CNMV of listing requirements for non-equity securities is no longer required, with a reduction of listing fees
- Negotiable securities can be represented by means of book entries, physical titles and DLT systems
- The legal regime applicable to DLT Securities is similar to the legal regime applicable to book-entry securities
- Secondary legislation is still pending

¹ Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU

will no longer be required; it will be for the AIAF's governing body to verify compliance with the applicable listing requirements. The AIAF's current listing process will have to be adapted accordingly.

This is intended to reduce the paperwork for issuers and facilitate the listing of non-equity securities. However, it must be noted that the CNMV is the competent authority for the approval of prospectuses under the Prospectus Regulation², so the CNMV's involvement will be required whenever a listing prospectus is required, unless an exemption to the prospectus requirement applies (such exemptions being quite limited in the case of non-equity securities) or in the case of issuances under base prospectuses (though the final terms will need to be filed with the CNMV according to the Prospectus Regulation).

The above will also have an impact on the listing fees, which will be reduced as the CNMV will not charge any fees for verifying compliance with the requirements for the listing of non-equity securities on the AIAF (which currently amount to 0.01% of the nominal amount of the securities, subject to a minimum and a maximum, which are higher than those applicable in other European jurisdictions).

The simplification of the listing process and the reduction of the listing fees are intended to increase the competitiveness of the Spanish fixed income market. What remains to be seen, however, is whether such measures are sufficient for the task.

REPRESENTATION OR REGISTRATION OF NEGOTIABLE SECURITIES BY DISTRIBUTED LEDGER TECHNOLOGY

The Spanish Securities Markets and Investment Services Act sets forth a legal regime for the representation or registration of negotiable securities (*valores negociables*) by means of DLT systems. Although the Spanish Securities Markets and Investment Services Act regulates DLT Securities broadly and detailed regulation is left for secondary legislation, the essential and basic terms of the DLT Securities legal regime are established. Generally, the DLT Securities legal regime replicates the existing legal regime for the representation of securities by means of book-entries (*anotaciones en cuenta*).

Scope of application

The DLT Securities legal regime provided for by the Spanish Securities Markets and Investment Services Act can only be applied to securities if such application is valid pursuant to the law applicable to the issuer and the law applicable to the terms and conditions of the securities. In this regard, the Spanish Companies Act, the consolidated text of which was approved by Royal Legislative Decree 1/2010, of 2 July, is also amended with the aim of allowing for the representation of shares and bonds by means of DLT systems.

Issuance of DLT Securities

The process contained in the Spanish Securities Markets and Investment Services Act for the creation of DLT Securities is very similar to the process for the creation of book-entry securities. The issuer will have to prepare an issue document (*documento de emisión*) containing the information necessary

² Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC

to identify the securities and the entity responsible for registering the securities in the relevant DLT system, as well as information on the DLT system itself (including information on its functioning and governance). A copy of the issue document will have to be deposited by the issuer with the entity responsible for registering the securities in the relevant DLT system. The DLT Securities will be created by registration in the relevant DLT system.

If the DLT Securities are listed, a copy of the issue document will also have to be deposited with the managing entity of the relevant trading venue. It should be noted that in light of the requirements imposed by the Central Securities Depositories Regulation (CSDR)³ on transferable securities admitted to trading to be represented in book-entry form, listing would only be possible on a DLT market infrastructure under the EU pilot regime.

The DLT system chosen by the issuer must ensure the integrity and immutability of the issuances made through it, allow for the direct and indirect identification of the holders of the rights over the DLT Securities, and define the nature, characteristics and number of the DLT Securities.

Entities responsible for registering the securities in the relevant DLT system

The entity(ies) responsible for registering the securities in the relevant DLT system will have to be authorised to provide the service of safekeeping and administration of financial instruments for the account of clients. Such entities will, among other functions, manage the identification of the holders of the rights over the DLT Securities, as well as the corporate events, registrations or encumbrances affecting the issue.

Transfer of title and creation of *in rem* security over DLT Securities

Similar to book-entry securities, DLT Securities will be transferred by means of registration of the transfer in the DLT system, an *in rem* security over DLT Securities will be created by registration in the relevant DLT system, and any other type of encumbrance will have to be registered in the relevant DLT system. DLT systems will have the appropriate mechanisms in place to register legal acts and arrangements that require registration. The person appearing in the DLT system will be deemed to be the legal owner of the relevant DLT Securities.

DLT Securities are at the forefront of innovation in capital markets. There have been issuances of DLT Securities by supranational entities such as the World Bank, the European Investment Bank and the Inter-American Development Bank, as well as global financial institutions such as Santander and Société Générale.

There are a number of challenges to overcome before a fully-fledged market for DLT Securities can develop. These include the commercial challenges of persuading issuers and investors of the merit of DLT Securities, operational challenges, and the legal challenges of adapting legislation to allow for the issuance, transfer and custody of DLT Securities. With the enactment of the Spanish Securities Markets and Investment Services Act, Spain has taken a first step in the right direction.

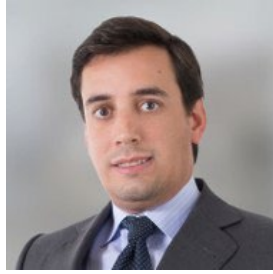
³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012

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