



Financial measures in the Creation and Growth Law

Legal Alert



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29 September 2022 saw the publication in the Official State Gazette of Law 18/2022 of 28 September 2022, for the Creation and Growth of Companies (hereinafter “Law 18/2022”, the “Law” or the “Creation and Growth Law”). In light of its imminent entry into force (20 days after its publication, i.e. on 19 October 2022¹) this alert sets out the main financial measures it ushers in.

This Law seeks to improve the business climate by encouraging business creation and growth, via measures designed to expedite the start-up process, strengthen regulation and eliminate obstacles to the pursuit of economic activities, while combatting late payments and facilitating access to financing.

The most important financial measures introduced by the Law are detailed below.

1. Enhancement of corporate financing

The Creation and Growth Law repeals Title V of Law 5/2015 of 27 April 2015, for the enhancement of corporate financing, as regards the “**Legal regime governing “crowdfunding” platforms, effective as of 10 November 2022**”, introducing, in article 15, a new Title V.

- **Legal regime governing participatory financing platforms, otherwise known as “crowdfunding” platforms.**

The Law refers to two different types of **crowdfunding platforms**:

- **Entities harmonised by EU law:** entities offering crowdfunding services in Spain that are subject to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937; crowdfunding entities of this type are subject to both this Regulation and the Law for the enhancement of corporate financing.

While not considered transferable securities, for the purposes of application of Regulation (EU) 2020/1503, **shares in limited liability companies** are to be **eligible** for use in the pursuit of the activities of the crowdfunding platforms and investment firms provided for in the Regulation.

- **Non-harmonised entities:** entities rendering crowdfunding services in Spain which are regulated in but **not subject to Regulation (EU) 2020/1503, as they fall under the exceptions provided for in article 1.2.a) or c), shall be subject to a specific legal regime.**

- **Preliminary authorisation from the Spanish National Securities Market Commission (CNMV) to act as a crowdfunding service provider**

The CNMV is appointed as the national authority charged with performing the functions and obligations provided for in Regulation (EU) 2020/1503.

Entities intending to render crowdfunding services in Spain that have not previously been authorised to provide such services in another EU member state must apply for authorisation to operate as a crowdfunding service provider and public registration with the CNMV.

Crowdfunding service providers authorised in accordance with Law 5/2015 and wishing to continue rendering the crowdfunding services falling within the scope of application of such Regulation as of 10 November 2022 must submit documentation evidencing their fulfilment of the requirements set forth in article 12 of Regulation (EU) 2020/1503 to the CNMV.

In such cases, where the CNMV does not notify the relevant entity of any objections within two months of the date of acknowledgement of receipt of its documentation, authorisation will be deemed granted by means of the simplified procedure provided for in article 12.11 of Regulation (EU) 2020/1503. However, where the CNMV raises an objection, the above two-month period will begin to run anew as from the date of submission of the documentation required to settle the objection.

- **Cooperation between regulators: CNMV and Banco de España**

In line with the principles of cooperation and collaboration, Banco de España must furnish the CNMV with any such information as it may require in relation to platforms that

¹ The date of entry into force is subject to two exceptions:

- the legal regime for participatory financing platforms, which will enter into force as of 10 November 2022; and
- the legal regime relating to electronic invoicing between traders and professionals, which will enter into force within one or two years of the adoption of the implementing regulations, depending on certain circumstances.

publish projects involving applications for loans, including crowdfunding loans, and offer, in the relevant area, any active cooperation and assistance that the CNMV may require for the effective exercise of the powers attributed to it in the Law.

To this end, the CNMV may request all such data, documents or means of evidence as may be available to Banco de España and request its assistance with a view to the best possible exercise of its oversight, inspection and penalty functions as provided for in the Law.

- **Investor information requirements**

Crowdfunding service providers must provide potential investors with all of the information referred to in article 23 of Regulation (EU) 2020/1503, by preparing a **key investment information sheet** (hereinafter the “information sheet”).

Nonetheless, **crowdfunding service providers that offer individual loan portfolio management services** must prepare and provide potential investors with a **key investment information sheet for the platform** containing all of the information provided for in article 24.1 of Regulation (EU) 2020/1503.

- **Liability and penalty regime**

Liability for the information appearing in the information sheet will lie with the project owner or its administrative, management or supervisory bodies.

Those responsible for the key investment information sheet must be clearly identified therein, by their names and functions, in the case of **natural persons**, or their names and registered offices, in the case of legal persons, together with declarations by them confirming that, to the best of their knowledge, the information contained in the key investment information sheet is in accordance with the facts and that such information sheet makes no omissions likely to affect its import.

The natural and legal persons responsible for the information provided in the information sheet, and its translation, as the case may be, will be held **civilly liable** where: (i) the information is misleading or inaccurate; or (ii) the information sheet omits key information needed to aid investors when considering whether to finance the crowdfunding project.

A specific **penalty regime** is introduced, which will be applicable in the event of **breach of the obligations or prohibitions** provided for therein.

- **Investor pooling mechanisms**

Crowdfunding platforms **authorised in accordance with the Law for the enhancement of corporate financing** may use an **investor pooling arrangement** such as: a limited liability company engaged exclusively in holding

the shares of the investee company or granting loans to such company; an entity supervised by the CNMV, Banco de España or the Directorate-General of Insurance and Pension Funds; or another arrangement traditionally used for the purpose in other EU countries.

2. Enhancement of collective investment

The Creation and Growth Law introduces changes to Collective Investment Undertakings Law 35/2003 of 4 November 2003 (LIIC, per its Spanish acronym)

Article 17 of the LIIC regarding **information documents**, including the content of the **prospectus**, is amended to state that each prospectus must state whether voluntary quarterly information is to be furnished. Where this is the case, the information in question must meet the requirements stated for six-monthly information, except as regards the details of the portfolio composition. In this regard, information may be furnished in aggregate form or by categories for a maximum of 30% of the portfolio assets.

As regards the **information to be provided to shareholders and the general public and publication** (article 18 LIIC), the Law amends the relevant provisions to provide that any communications to shareholders must be sent electronically, except where the data required to do so has not been provided or the preference to receive such communications on paper has been expressed, in which case, it will be furnished in this manner, always free of charge.

Articles 40.1 and 40.2 of the LIIC are amended to state that the **managers of collective investment undertakings (SGIIC, per its Spanish acronym)** are public or private limited companies. Moreover, these managers **may be authorised to pursue the following activities**:

- a) Discretionary, individual management of investment portfolios, including those belonging to pension funds.
- b) Administration, representation, management and marketing of venture capital funds, closed-end type collective investment undertakings (EICC, per the Spanish acronym of this term), European Venture Capital Funds (EuVECA), European Social Entrepreneurship funds (EuSEF) and European Long-term Investment Funds (ELTIFs), on the terms set forth in Law 22/2014 of 12 November 2014.

Lastly, article 43.1 of the LIIC is amended as regards the requirements to be met by such managers to secure and retain authorisation, and article 58.1 is amended with respect to custodians.

3. Amendments for venture capital entities

The following changes are particularly noteworthy among the amendments to **Law 22/2014 of 12 November 2014 regulating risk capital institutions, other closed-end type collective investment undertakings and closed-end type collective investment undertaking managers.**

- The Law introduces a new **article 4 bis, on Loan - EICCs (EICCPs**, per the Spanish acronym of this term), taken to mean EICCs that have as their principal purpose investment in invoices, loans, credits and commercial bills commonly used in business.

The managers of these undertakings must meet certain requirements in order to be able to operate as such.
- Elsewhere, a new article, 40 bis, introduces the **European Long-Term Investment Funds (ELTIFs) regulated in Regulation (EU) 2015/760.**
- Similarly, a new article 74 bis is included regarding the **conditions for eligibility for and pursuit of the activity of Closed-end Investment Undertaking Managers (SGEIC, per the Spanish acronym of this term)** providing that SGEICs that wish to be classed as ELTIFs must meet the requirements laid down in Regulation (EU) 2015/760 of the European Parliament and of the Council, on European Long-Term Investment Funds.

4. Other noteworthy finance-related changes

Lastly, final provisions one, two and three of the Creation and Growth Law amend and repeal several pieces of legislation. These amendments are fairly minor regulatory updates in the case of **Law 41/1999 of 12 November 1999, on payment and securities settlement systems** and wider reaching in others, such as:

- **Law 10/2010 of 28 April 2010 on the Prevention of Money Laundering and Financing of Terrorism**, which is amended as regards the protection of personal data and exchange of information between affected parties and centralised filing systems for fraud prevention, inter alia. It now includes the option for affected parties belonging to the same category for the purposes of the prevention of money laundering and financing of terrorism to create shared information systems for the storage of and access to information and documentation gathered in order to comply with due diligence obligations. In such cases, they must notify the Commission for the Prevention of

Money Laundering and Monetary Offences of their creation at least sixty days in advance.

- **Law 10/2014 of 26 June 2014, on the Regulation, Supervision and Solvency of Credit Institutions**, which is amended as regards protection of the customers of credit institutions, to provide that:
 - Credit institutions must act in an honest, impartial, transparent and professional manner with respect to the rights and interests of their clientele; and
 - Deposits and other reimbursable public funds may not be secured from credit institutions based in Non-EU member states that render services without a branch in Spain.

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