



# CORPORATE LAW NEWSLETTER

FEBRUARY 2019

## OUTSTANDING REGULATION DEVELOPMENTS

**LAND TRANSPORT.** Royal Decree 70/2019, of 15 February, which amends the Regulation of the Land Transport Act and other regulatory standards in training of drivers of land transport vehicles, control documents in relation to land transport, sanitary land transport, transport of hazardous goods and the National Land Transport Committee. [Full Text.](#)

**TRADE SECRETS.** Law 1/2019, of 20 February, of Trade Secrets. [Full Text.](#)

**THE HAGUE CONVENTION APOSTILLE.** Entry into force of Regulation (EU) 2016/1191 of the European Parliament and Council of July 6, 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) no. 1024/2012, which eliminates, among others, the requirement to obtain the Apostille for public documents issued by official bodies in EU countries. [Full Text.](#)

The present newsletter is merely informative and non-exhaustive and does not constitute any type of legal advice. If you wish to receive the present newsletter, please send an e-mail to the sender: [mazars.taxlegal@mazars.es](mailto:mazars.taxlegal@mazars.es)

## OTHER OUTSTANDING REGULATION DEVELOPMENTS

- **TAXES.** Order HAC/135/2019, of 31 January, which modifies Order EHA/3482/2007, of 20 November, which approves certain models, consolidates and updates certain management rules in relation to Special Taxes on Manufacturing and to the Tax on Retail Sales of Certain Hydrocarbons, and modifies Order EHA/1308/2005, of 11 May, which approves model 380 of declaration-liquidation of the Value Added Tax on operations assimilated to imports, determining the place, manner and term of presentation, as well as general conditions and electronic filing proceeding. [Full Text](#).
- **PETROLEUM PRODUCTS.** Resolution of February 7, 2019, of the Directorate General for Energy Policy and Mines, which publishes new selling prices, before tax, of liquefied gases carried by pipeline. [Full Text](#).
- **SOCIAL SECURITY.** Royal Decree 17/2019, of 25 January, which amends the General Regulation on Contribution and Liquidation of other Social Security Rights, approved by Royal Decree 2064/1995, of 22 December. [Full Text](#).
- **GREENHOUSE GASES.** Resolution of February 4, 2019, of the Directorate General of Energy Policy and Mines, which publishes reporting formats related to the intensity of emissions of greenhouse gases of fuels and transport energy. [Full Text](#).
- **BANK OF SPAIN. DEPOSIT GUARANTEE FUND.** Circular 1/2019, of 30 January, **amending** annex 2 of Circular 8/2015, to entities and branches members of the Credit Institutions' Deposit Guarantee Fund, on information to determine calculation bases of contributions to the Credit Institutions' Deposit Guarantee Fund. It adds new fields with the depositor's contact details, specifies the definition of certain fields, which content was not fully explained, and allows the use of certain special characters, as these are necessary to specifically process depositors' contact details. This aims to ensure that the SCV receive higher quality data and to identify depositors more easily when facing a situation of reimbursement to depositors by the deposit guarantee fund. [Full Text](#).

## NOTABLE RESOLUTIONS OF THE DIRECTORATE GENERAL REGISTRIES AND NOTARIES

**MODIFICATION OF BYLAWS ON A LIMITED COMPANY. Resolution of January 25, 2019. [Full Text](#).** The present resolution rejects the Appeal filed before the Registrar's negative qualification to inscribe the bylaws' reform in a Limited Company. Being part of the share capital present and/or represented, the main reason for the Registrar's rejection is the breach of art. 287 LSC, which embodies the right of information within a reform of the bylaws, due to the omission of the specific information required by the LSC for bylaws' modifications, since this reform should entail a reinforced information guarantee system. Therefore, generic information referred to the documentation provided to the Board cannot be assumed as information guarantee, but an express reference must be made to the text proposed to modify the Bylaws. Accordingly, the DGRN rejects the appeal.

**CAPITAL INCREASE IN AN EMPLOYEE-OWNED COMPANY. Resolution of January 30, 2019. [Full Text](#).** The present resolution rejects the Appeal filed before the DGRN in relation to a negative qualification for a capital increase and corresponding modification of Bylaws. The Registrar understands that the bylaws' provisions do not adapt to Law 44/2015, of employee-owned companies and investees, and thus their inscription is not applicable. Indeed, the DGRN goes beyond the above and determines that the lack of adaptation to said Law and consequent automatic inscription of the Bylaws leads to the closure of the Company's Registry sheet. Therefore, the lack of inscription is not contained on exceptions determined on the second transitory provision of Law 44/2015. Accordingly, the DGRN rejects the appeal and the Registry sheet will remain closed, since the Company's Bylaws are not inscribed.

## MATTERS OF SPECIAL INTEREST FOR DIRECTORS AND MANAGERS

**NOTICE OF GENERAL SHAREHOLDERS' MEETING. Resolution of January 2, 2019. [Full Text](#).** On the present resolution, the DGRN analyzes formal requirements of the notice of a General Shareholders' Meeting by one of its joint and several directors, on his own behalf (as natural person and not on behalf of the Company or in exercise of his position as director), through communications made on the shareholders' postal address by a private operator, whereas the bylaws established that notices should be made through "certified mail with acknowledgement of receipt". In this sense, the DGRN reiterates that "*there being a provision on the Bylaws on the notice to the shareholders' meeting, such provision must be strictly followed, without any possibility to validly and efficiently use any other system, with more or less publicity, including legal complementary means (see, among others, Resolutions of October 15, 1998, June 15 and September 21, 2015 and April 25, 2016), so that the manner for the notice established by the bylaws must prevail, and will be required for any means, including a judicial or registry notice*". Also, the DGRN adds that the single postal entity with "*presumption of veracity and validity in the distribution, delivery and reception or refusal or impossibility of delivery (...), both those performed by physical and electronic means*" is Correos («Sociedad Estatal Correos y Telégrafos, S.A.»), and thus a notice made by a private entity will not be valid if there is no complementary proof of receipt.

**NOTICE OF MEETING. Resolution of January 9, 2019. [Full Text](#).** Through the present resolution, the DGRN rejects the appeal filed before the Registrar's qualification, which considers that the act to be inscribed must receive a negative qualification since the General Shareholders' Meeting has been called steering away from the bylaws' provision on this matter. In this sense, the DGRN reiterates the doctrine that establishes that, as long as there are contents on the bylaws related to notices, they must be respected, since the bylaws' precept holds a statutory imperative nature. Moreover, the Directorate considers that it is worth noting the protection of the shareholders' interest for preventing statutory manners to ensure the notice's validity. Accordingly, the DGRN rejects the filed appeal.

## REMARKABLE CASE LAW

**JUDGEMENT BY THE GENERAL COURT OF THE EU OF FEBRUARY 8, 2019.** [Full Text](#). The present Judgement cancels the resolution of the EUIPO related to a figurative mark. The original conflict derives from the opposition by some Dutch employers to such mark registration, due to the possibility of confusion of both marks by European consumers. The GCEU, on the other hand, understands that (i) from the visual standpoint, the similarity degree is low. Also, (ii) there is no risk of confusion from the phonetic point of view, although a similar word is contained. Lastly, from the conceptual standpoint, (iii) in one of the cases, a specific identifiable person is designated by the European average public against a common unspecified name in a natural person. Accordingly, the GCEU considers that there are sufficient reasons to discard the existence of confusion by the average European consumer. Thus, the EUIPO's decision is declared void, authorizing the figurative mark subject to controversy.

**JUDGEMENT BY THE EUROPEAN COURT OF JUSTICE OF FEBRUARY 14, 2019.** [Full Text](#). The ECJ declares that it is not possible to declare void, through a standard with retroactive nature, credit agreements entered into with foreign suppliers. These suppliers were not authorized on the Member States where the rule on retroactive nature comes into force. The present matter revolves around the request of a credit by a Croatian citizen, who entered into a non-renewable loan agreement with an Austrian entity. Furthermore, a mortgage is configured on an estate in a public deed, which is deposited on the corresponding Croatian Registry. The loan agreement establishes an alternative jurisdiction in case of disputes derived from the abovementioned loan agreement. Subsequently, the Croatian authorities published a standard through which credits entered into with unauthorized foreign entities are void, and which also determines that such rule is retroactive. Having said this, the Croatian citizen resorts to first-instance Courts of Croatia, aiming to obtain nullity for the loan agreement. In turn, the Austrian lender understands that the principle of freedom to deliver financial entities that governs the EU domestic market is violated. The ECJ, on its legal grounds, determines that the Croatian standard is fully discriminatory with financial operators who operate outside the national Croatian territory. Consequently, the ECJ affirms that the Croatian retroactive standard is contrary to the EU law.



## REVIEW – Trade Secrets. The new law reinforces the trade secrets’ protection creating a specific regulatory framework.

Last February 21, the Official State Gazette (BOE) published *Law 1/2019, of 20 February, of Trade Secrets* transposing Directive 2016/943 on the protection of trade secrets.

With regards to the most noticeable **substantial modifications**, we highlight the following:

### 1. End to the dispersion of regulations:

*A specific law is created, putting an end to the dispersion of regulations that hindered the protection of trade secrets against their illegal obtaining, use and disclosure.*

Until the new law was enacted, the Spanish regulation in this matter was limited to several precepts distributed between the Criminal Code and the Unfair Competition Law, and mainly to the confidentiality clauses within contracts. Nonetheless, on an interconnected globalized world, where theft, data copying or corporate espionage constitute an increasing threat, the creation of a specific law to protect the knowhow and business innovation entailed an urgent need.

### 2. The concept of trade secret:

Article 1 of the new law, in line with the transposed Directive, defines trade secret as “*any information or knowledge, including technological, scientific, industrial, commercial, organizational or financial information or knowledge*” that meets conditions of: **(a)** being secret, that is to say, not being known by persons belonging to circles that usually use this type of information or knowledge, and not being easily accessible by such personas; **(b)** having a business value, real or potential, precisely for the fact of being secret; and **(c)** having been subject to reasonable measures by its owner to keep it secret.

### 3. The protection is extended to “*infringing goods*”:

“*Infringing goods*” are those goods which production, offer or trading has been performed by a person who knows or could have known that such goods were tainted from their origin by an illegal obtaining of a trade secret.

### 4. Third parties in good faith

Proceedings may be filed, in addition to against the secret’s infringers, against acquiring third parties in good faith. In such cases, an indemnity could substitute the execution of actions when it could cause a disproportionate damage for the acquirer in good faith.

### 5. Damage calculation

As alternative formula to calculate damages –in addition to the classic elements of consequential damages, loss of profit, unjust enrichment, etc.–, the law establishes the possibility to determine a lump sum, based on the amount payable by the infringer to the secret owner for granting the licence that would have allowed the use of such secret.

### 6. Three-year barred period

The new law establishes a 3-year barred period for trade secrets’ defence actions, unlike the general 5-year term for personal actions.

Furthermore, with regards to **procedural modifications**, we highlight the following:

#### 1. Precautionary measures

For the purpose of ensuring the effectiveness of the eventual ruling in favour of those who have exercised civil defence actions, the law establishes a non-exhaustive list of precautionary measures, among which: **(i)** the cessation or prohibition to use or disclose the trade secret; **(ii)** the retention and deposit of infringing goods; and, **(iii)** the preventive seizure of goods to ensure an eventual indemnity for damages.

#### 2. Territorial jurisdiction:

The law establishes the territorial jurisdiction of the Commercial Court corresponding to the defendant’s address or, at the plaintiff’s choice, the Commercial Court of the province where the infringement was performed or its effects.

The full text may be consulted on the [following link](#).



## OUR OFFICES IN SPAIN

**ALICANTE**  
c/ Pintor Cabrera, 22  
03003 Alicante  
Tel: 965 926 253

**BARCELONA**  
c/ Diputació, 260  
08007 Barcelona  
Tel: 934 050 855

**BILBAO**  
c/ Rodríguez Arias, 23  
48011 Bilbao  
Tel: 944 702 571

**MADRID**  
c/ Alcalá, 63  
28014 Madrid  
Tel: 915 622 670

**MALAGA**  
c/ Pirandello, 6  
29010 Malaga  
Tel: 952 070 889

**VALENCIA**  
c/ Felix Pizcueta, 4  
46004 Valencia  
Tel: 963 509 212

**VIGO**  
Plaza de Compostela, 17  
36201 Vigo

## CONTACT



### Jorge Rius - Partner

 91 562 40 30

 [jorge.rius@mazars.es](mailto:jorge.rius@mazars.es)



### Clementina Barreda - Partner

 91 562 40 30

 [clementina.barreda@mazars.es](mailto:clementina.barreda@mazars.es)

More information at [www.mazars.es](http://www.mazars.es)

**MARCALLIANCE**   
THE BRIDGE TO YOUR GLOBAL LAWYER