



Corporate Law newsletter

Outstanding regulation developments

Alarm state. Royal Decree 926/2020, of October 25th, declaring the alarm state in order to contain the propagation of infections caused by SARS-CoV-2. [Full Text.](#)

National Commission of the Stock Market. Listed Companies. Savings Banks. Circular 1/2020, of October 6th, of the National Commission of the Stock Market, amending Circular 5/2013, of June 12th, which establishes the models for the annual corporate governance report of listed companies, savings banks and other entities that issue stocks admitted to trading on official stock markets; and Circular 4/2013, of June 12th, which establishes the models for the annual report on the remuneration of the directors of listed companies and the members of the board of directors and the control committee of the savings banks that issue stocks admitted to trading on official stocks markets. [Full Text.](#)

Taxes. Law 5/2020, of October 15th, on the Tax on Financial Transactions. [Full Text.](#)

For further information, please consult [here](#) the section of the BOE dedicated to the COVID19 crisis with the consolidated regulations.

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

Other outstanding regulation development

- **Taxes.** Law 4/2020, of October 15th, on the Tax of Certain Digital Services. [Full Text.](#)
- **Equal Pay.** Royal Decree 902/2020, of October 13th, on equal pay between women and men. [Full Text.](#)
- **AEAT - Brexit.** Effects of the end of the transitional period on commercial trades. [Full Text.](#)
- **AEPD.** Communicate – Breach RGPD. The AEPD has published a tool to help the controllers to decide whether to communicate a security breach to the affected parties. [Full Text.](#)
- **Autocontrol.** Code of Conduct on the use of influencers in advertising. [Full Text.](#)
- **National Commission of Markets and Competition. Electrical Sector.** Resolution of September 24th, 2020, of the National Commission for Markets and Competition, approving the adaptation of Operation Procedure 4.0 "Management of international interconnections" to European regulations. [Full Text.](#)
- **Entities participating in TARGET2.** Resolution of October 2nd, 2020, of the Bank of Spain, publishing the list of direct participants in TARGET2 – Bank of Spain. [Full Text.](#)
- **Ministry of Transport, mobility and Urban Agenda. Endorsements.** Order TMA/924/2020, of September 29th, extending the deadline for the application and formalization of loans guaranteed and financed by the State as provided for in article 8 of Order TMA/378/2020, of April 30th, and in the Agreement with the Official Credit Institute, for the management of the endorsements and the subsidy of expenses and interests by the State to tenants in the "COVID-19 Lease Guarantee Line". [Full Text.](#)
- **DGSJFP and General Directorate of the Cadastre.** Resolution of October 7th, 2020, of the Sub-Secretariat, publishing the joint Resolution of the General Directorate of Legal Security and Public Faith and the General Directorate of the Cadastre, approving complementary technical specifications for the graphic representation of properties on cadastral mapping and other requirements for the exchange of information between the Cadastre and the Property Registry. [Full Text.](#)
- **Salary Guarantee Fund.** Computerized management. Order ISM/903/2020, of September 24th, regulating electronic notifications in the field of the Social Security Administration. [Full Text.](#)

Please [click here](#) to access our analysis of key aspects in the labor, tax, corporative or financial field that companies will have to face, prepared by our specialist of Mazars, and also to our Covid Talks.

Please also visit our Global Tax and Law Tracker. Mazars' global tax and legal experts from more than **70 countries** have created this interactive **tool** to help you access and understand the **Covid-19** legislation and tax measures that impact you and your business, wherever in the world you operate.

Please click **HERE** to have access to the Global Tax and Law Tracker

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGRN. Corporate Resolutions. Resolution of September 24th, 2020. [Full Text.](#)

By means of the present document, two titles are presented regarding the appointment of the director of the same company by two different universal general meetings, and there is a controversy regarding the ownership of the condition of shareholders and the required majorities. In these meetings, the same sole director is dismissed, different sole directors are appointed, both agreements are raised to public record and presented before the Mercantile Registry. The discussed title is the one presented in second place. For the DGSJFP, it is necessary to adequately determine the conflict that occurs when, at the time of qualification, there is a subsequent authentic document presented that questions the validity or effectiveness of the first one. Finally, it rejects the registration of the second title, because as long as the first one is pending of dispatch or with a valid entry, or the real ownership of the shares and the validity of one or another contradictory meeting is decided in court, the nullity of the agreements that were presented in the first place cannot be determined at the registry level.

DGRN. Capital Share Decrease. Resolution of September 2nd, 2020. [Full Text.](#)

In the present case, the Mercantile Registrar had refused to register a capital decrease with the purpose of returning the capital contributions to a shareholder through the award of a real estate property, and the partial modification of the corporate statutes. The Registrar understood that to carry out such corporate resolutions it was necessary to obtain an absolute majority. The General Directorate confirms the decision of the Registrar, considering that the share capital decrease carried out does not affect equally all the participations in which the share capital is divided. To carry it out, the consent of all the partners, issued individually, is required.

DGRN. Renewal of the position of Director of an S.A. Resolution of October 14th, 2020. [Full Text.](#)

The Registrar rejected the registration of the agreement approved by the General Meeting of an S.A. in which the position of sole director was renewed with retroactive effects. The Registrar understood that the agreement cannot be registered retroactively, but only from the date of the meeting. The DGSJFP considers that the re-election, even if it means a continuity in the position, implies a previous cessation, and does not mean an extension, but a new appointment, complying with the same requirements as any other appointment. It considers that the date of registration can only be the one of the agreement of the Meeting with the new appointment of the director with the expired position, notwithstanding the effectiveness that, out of the Registry's publicity, may derive from the agreement adopted for the validation and approval of the acts carried out by the director.

DGRN. Merge and Share Capital of an SL. Resolution of October 9th, 2020. [Full Text.](#)

The resolutions for the merger of two companies are made public. As a result of the merger, the capital of the absorbing company is increased. The Registrar points out two errors: (i) The capital increase of the absorbing company cannot be registered because the resulting amount does not cover the assets of the absorbed company; (ii) The date of communication of the merger agreement to the creditors is not recorded. Regarding the first one, the DGSJFP understands that, according to the principle of the reality of the share capital, the issue of shares that do not correspond to an effective contribution to the company's assets is void and it is not possible to issue shares for a lower amount than their nominal value. As for the second one, it states that the deed must include the date on which the communication to the creditors has been carried out, since this is the only way to verify that the statement regarding the non-existence of opposition complies with the legal provisions.

Remarkable Case Law

Ruling of the Supreme Court, of October 15th, 2020. [Full Text.](#)

The SC analyses whether the figure of the "Project Manager" can be understood as an agent of the edification (arts. 8 and following of the Law on the Organization of the Edification) to demand responsibility. It considers that the different activities in which the project manager is usually obliged make it participate and coincide with obligations that have traditionally been assigned to other building agents. As it is not a regulated profession, the competences assumed by the project manager will depend on the Project Management contract itself in each case. However, in the practice these contracts usually assign the direction and coordination of human and material resources during the project, using management techniques to achieve the pre-set objectives. The Project Manager usually assumes the sole management of all phases of the project, the coordination of the involved agents, the participation in the viability study and the monitoring of the construction process. For the SC, the project manager stands in an intermediate position between the developer and the facultative management. In the present, the developer had delegated to him the power of decision, and the project manager was involved in the functions of the developer, economic management, execution and quality control, and with such autonomy that it had the characteristics of a building agent with its own entity (art. 8 LOE). Therefore, it is responsible to the owner of the building, who was in addition the developer, for the lack of control over those who should supervise the process of execution of the work.

Ruling of the Supreme Court, of September 17th, 2020. [Full Text.](#)

It is decided on the balance between the right to be forgotten and the freedom of expression and information when the professional work of the person who exercises it is limited to a private activity. In the present case, there were a series of articles published in the Internet search results on two platforms in which criticism and comments on the professional activities of the petitioner of the right to be forgotten were inserted. The SC understands that this information refers to the professional aspect of the

interested party and, therefore, Art. 18 EC does not apply in its full intensity, as there is a concurrent interest by the society and the users to know opinions about the quality with which certain services are provided. Furthermore, certain professional aspects are of public interest, identified in the interest of consumers in such services. Therefore, the fact that the interested party is a private person does not imply that the information is not relevant to the public interest. Finally, the SC considers that the expressions relating to the professional activity of the interested party, and only in a way that is accessory to a way of life, are not disproportionate or unnecessary for the public interest of the information.

Ruling of the Supreme Court, of October 15th, 2020. [Full Text.](#)

The Supreme Court rules on the impugnation of an agreement of the Committee of Guarantees of an Association in which the presentation of a candidature is declared extemporaneous about an electoral process in the Association. The SC understands that in order to consider such a claim and declare the lack of validity of the agreements adopted by the bodies of the association, it is appropriate to direct the lawsuit against the association. For the effectiveness of the sentence that considers the claim, it is not necessary that prior or contemporaneous pronouncements are made against other subjects. In addition, it understands that certain impugnations of associative agreements can have direct repercussions on third parties with such transcendence that justifies that they should be allowed to intervene in the process, as in the case of the corporate entities (art. 206.2 and 3 LSC).

Review – Circular 1/2020, of October 6th, of the National Commission of the Stock Market, amending the Circular 5/2013, of June 12th, and Circular 4/2013, of June 12th.

Last Monday, October 12, Circular 1/2020, of October 6, from the CNMV was published, being the first Circular of this kind published this year.

The purpose of the present Circular is to modify the Annual Corporate Governance Report models for listed companies, savings banks and other entities that issue stocks admitted to trading on official stock markets, as provided for in Circular 5/2013 (hereinafter "**ACGR**"), and the models for the Annual Report on the Remuneration of Directors of listed companies and of members of the Board of Directors and the Control Committee of savings banks that issue stocks admitted to trading on official stock markets (CNMV Circular 4/2013) (hereinafter "**ANRD**").

These changes in the previous models are a consequence of the approval of the partial revision that was carried out in the Good Governance Code for Listed Companies, on June 25, 2020.

1. Changes introduced in the ACGR models.

They mainly affect section G of the model, in which companies must indicate the degree of compliance with corporate governance recommendations.

Among the modifications we may highlight the following:

(i) The scope of application of section D.7 has been extended. It will apply to all other cases in which the listed company is under the control of another entity, whether listed or not.

(ii) Section C.1.28 has been updated: the objective of the Board of Directors in the formulation of the annual accounts is to ensure that accounting principles and criteria are correctly applied.

(iii) The model has been amended to request additional information on gender diversity.

(iv) Section C.1.36. is adapted so that the board may examine, as soon as possible, any situation affecting a director that may harm the credit and reputation of the company, evaluate such situations without delay and decide whether or not to take any action.

(v) A transitional provision has been included establishing the criteria to clarify how section G of the annual corporate governance report for 2020 should report on the degree of compliance with the recommendations that have been amended.

2. Changes introduced in the ANRD models.

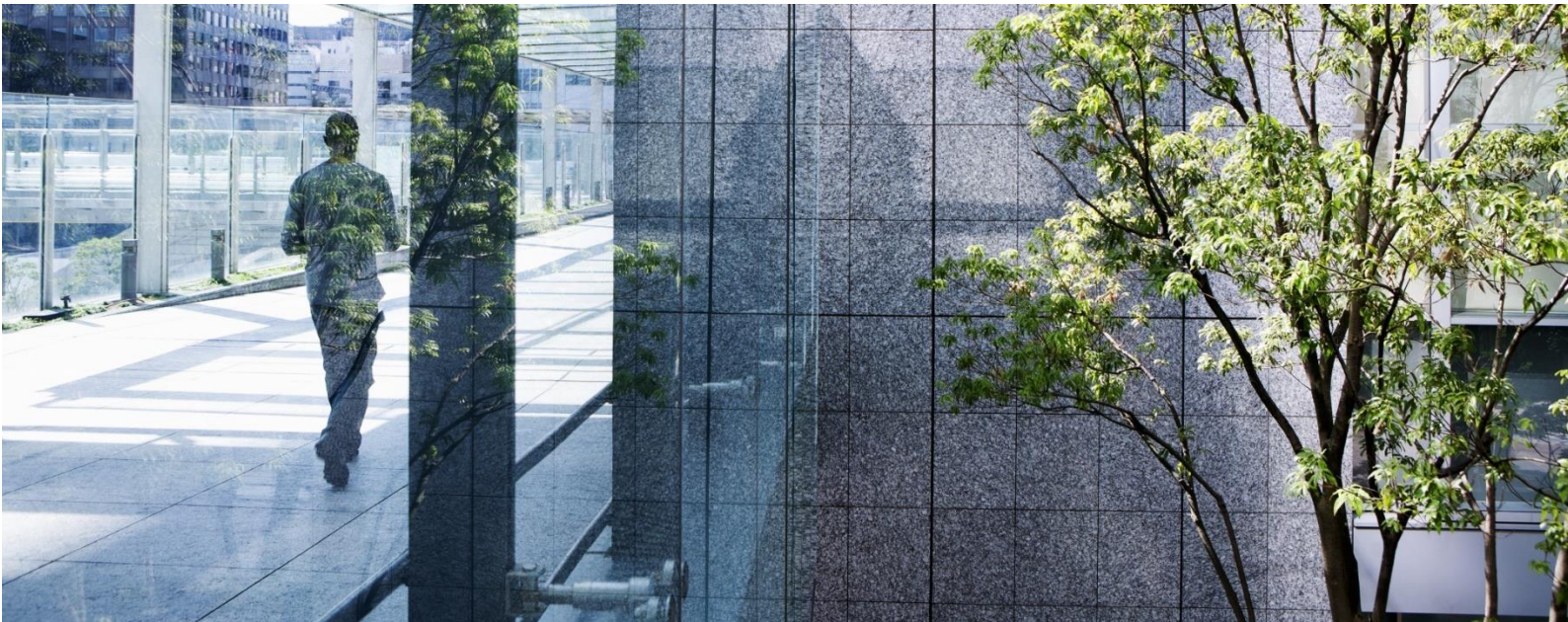
Two new headings are included in the sections so that companies, in accordance with recommendation 59, explain the criteria they apply to check that the conditions to which variable remuneration is linked have been effectively fulfilled.

The Circular entered into effect on the day following its publication in the Official State Gazette, that is, on October 13, and it is applicable to the ACGR and ANRD that the obligated entities must present for the financial years closed as from **December 31, 2020**, inclusive.

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

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