



Corporate Law newsletter

Outstanding regulation developments

Urgent measures. Royal Decree-Law 35/2020, of December 22nd, on urgent measures to support the tourism sector, hostelry and trade, and tax matters. [Full Text.](#)

European Union. Royal Decree-Law 38/2020, of December 29th, adopting measures to adapt the situation of a third country of United Kingdom of Great Britain and Northern Ireland after the end of the transitional period provided for in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, of January 31st, 2020. [Full Text.](#)

General State Budget. Law 11/2020, of December 30th, on the General State Budget for the year 2021. [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

- **Urgent measures.** Royal Decree-Law 36/2020, of December 30th, approving urgent measures for the modernization of the Public Administration and for the implementation of the Recovery, Transformation and Resilience Plan. [Full Text.](#)
- Urgent measures. Royal Decree-Law 37/2020, of December 22nd, on urgent measures to deal with the situations of social and economic vulnerability in the field of housing and transport. [Full Text.](#)
- **Financial measures.** Royal Decree-Law 39/2020, of December 29th, on financial measures for social and economic support and compliance with the execution of rulings. [Full Text.](#)
- **Taxes.** Law 10/2020, of December 19th, amending Law 58/2003, General Tax Law, in transposition of the Directive (EU) 2018/822, of the Council, of May 25th, 2018, amending Directive 2011/16/EU, with regard to the automatic and mandatory exchange of information in the field of taxation in relation to cross-border mechanism subject to communication of information. [Full Text.](#)
- **Taxes.** Royal Decree 1178/2020, of December 29th, amending the Corporation Tax Regulations, approved by Royal Decree 634/2015, of July 10th. [Full Text.](#)
- **Demarcation and Judicial Organization.** Royal Decree 1050/2020, of December 1st, creating thirty-three COVID-19 judicial units corresponding to the 2020 programme. [Full Text.](#)
- **Subsidies.** Royal Decree 1052/2020, of December 1st, which regulates the direct granting of various subsidies in commercial matters. [Full Text.](#)
- **Personal Income tax and VAT.** Order HAC/1155/2020, of November 25th, which develops, for the year 2021, the method of objective estimation of the Personal Income Tax and the special simplified regime of Value Added Tax. [Full Text.](#)
- Education. Organic Law 3/2020, of December 29th, amending Organic Law 2/2006, of May 3rd, on Education. [Full Text.](#)
- **Good practice code, year 2021.** Code of the self-regulation system of *Farmaindustria*. [Full Text.](#)

Please [click here](#) to access our analysis of key aspects in the labor, tax, corporate 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

DGSJFP. Interpretation of Article 40(1) and (2) of Royal Decree Law 8/2020. Resolution of November 19th, 2020. [Full Text.](#)

The DGSJFP decides on the interpretation of Article 40 paragraphs 1 and 2 of Royal Decree Law 8/2020, regarding the holding of a General Meeting and the adoption of agreements by the members in writing and without a session. The limited liability company held the General Meeting and adopted the corresponding agreements "in writing and without a session", without being provided for in the Bylaws. Article 40.1 establishes that the celebration of the General Meetings may be carried out by videoconference or multiple telephone conference, provided that all the persons entitled to attend have the necessary means, the secretary recognises their identity and expresses it in the minutes, even if there is no statutory provision. However, article 40.2 allows the holding of meetings of the board of directors in writing and without a session. Although the limited liability company defends the validity of holding the meeting "in writing and without a session", the DGSJFP establishes that the legislation is clear and that it is not possible to do so in this way, this argument being further confirmed by the correction of this article in Royal Decree Law 11/2020.

DGSJFP. Reservation of a company name. Resolution of November 19th, 2020. [Full Text.](#)

The DGSJFP upholds the appeal against the refusal of the Mercantile Registrar to reserve a company name according to Article 398.2 of the Regulations of the Mercantile Registry, which states that "*the acronym or abbreviated name may not form part of the name*" of a company. In the present case, it is discussed about the word "*Hit*", which was part of the corporate name. The Mercantile Registrar maintains that the word is the acronym of the entire corporate name, while the appellant defends that this word has its own meaning. The DGSJFP upholds the appeal, alleging that if the word in question has a connection with the rest of the denomination or has a meaning of its own, a restrictive interpretation of this article must be made.

DGSJFP. Refusal to register the modification of clauses of the bylaws regarding the regime of transfer of the company's shares. Resolution of November 23rd, 2020. [Full Text.](#)

The DGSJFP rejects the appeal filed by a limited liability company against the refusal of the Mercantile Registrar to register the amendment of the Bylaws of a company with respect to the regime for the transfer of the company's shares. The statutory amendment intended that, upon notification of the seizure of the company's shares by the Judge or Administrative Authority, the company, through the governing body, may acquire part or all of the shares seized, and may exercise the right within a maximum period of three months as from the notification to the company of the seizure procedure; and if the company did not exercise this right, all the shareholders may acquire the shares seized, within a maximum period of twenty days. The price of acquisition may correspond to the reasonable value of the shares and payment may be deferred for a period of five years. The Registrar's refusal is based on the fact that these amendments allow the seizure object to be modified, before the enforcement phase, since this replaces "*all or part of the seized company shares at their book value, even when this amount is lower than that claimed by the plaintiff in the enforcement procedure, and payment of which may be deferred, with the consequence of imposing the judge to lift the obstacle in respect of the shares acquired*". The DGSJFP confirms the position of the Registrar.

Remarkable Case Law

Ruling of the Supreme Court of 10th December 2020.

[Full Text.](#)

The present ruling is based on a series of conflicts in a family limited liability company, in which its shareholders disagree on the distribution of dividends. Two questions are discussed. The first one is about the validity of article 348 bis of the LSC (right of separation of the shareholder in the event of failure to distribute dividends), particularly in order to decide whether the relevant date in the case for the right of separation is that of the financial year in respect of which profits are reserved or otherwise the date of the meeting. The appellant claims that the provision whose improper application is challenged became effective on October 2nd, 2011, and therefore would only be applicable to general meetings held for the application of the results of financial year 2011 and subsequent years, but not for a financial year, 2010, prior to its effectiveness. Accordingly, the SC rules that what is relevant in this regard is whether such article was in force at the time the meeting was held and considers that the provision was already in force when the general meeting to which the dispute refers was held (October 15th, 2011). The second question raised is whether article 348 bis LSC, (in the wording applicable at the date of the general meeting), expressly and literally required for the exercise of the right of separation, "*the vote in favor of the distribution of the corporate profits*". In relation to this point, the SC understands that the rejection of the shareholders who are going to exercise their right of separation to the agreement against them is sufficient as a requirement. Therefore, it is not so much a question of voting in favor of the distribution of the dividends (a possibility that may not be contemplated as such in the agenda), but rather of voting against the result being applied for other than the distribution of dividends.

Ruling of the Supreme Court of 10th December 2020.

[Full Text.](#)

By means of the present ruling, The SC summarizes the requirements for the liability of directors. In particular, on the possible liability of the director in the event of a double payment of the same credit to the Company by the bank, and the damage caused to the latter. The SC understands that the damage caused to the bank by the double payment of the same credit to the Company, which generated in its favor an unjustified payment, is a direct damage to the bank, and there is a direct causal relationship between the double payment and the property damage suffered. In addition, it considers that the director's passivity, by failing to adopt the necessary measures to restore the collection of the undue by the Company, implies a breach of his obligation to perform his position with diligence, aggravated by the fact that he had or allowed others to have the funds. In short, the SC establishes that there is no doubt that, by not making the reimbursement, there would be a breach of a non-contractual obligation of unjust enrichment, attributable not only to the holder of the obligation (the Company) but also to the director's conduct. It is a breach linked to the director's conduct (by avoiding the request for restitution of an undue payment) translated into a clear breach of the general duty of diligence imposed by the law, since he repeatedly refuses to make the reimbursement without a justified cause. In the present case, it has been accredited a specific and own conduct of the director that has caused a direct damage to the equity of the bank, and the lack of legality derives from the fact that the legal obligation of the duty of diligence of article 225 LSC has been infringed which, consequently, allows to appreciate in the present case the concurrence of all the legal requirements to demand the direct responsibility of the director, according to article 241 LSC.

Review – Royal Decree-Law 38/2020, of December 29th, adopting measures to adjust the United Kingdom of Great Britain and Northern Ireland to the situation of a third country after the end of the transitional period provided for in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, of January 31st, 2020.

The present regulation includes the measures adopted to adjust to the change of the United Kingdom as a third state, after the end of the transitional period provided for in the "*Withdrawal Agreement*".

It will enter into force on January 1st, 2021, although with some reservations regarding Articles 4 (access and exercise of the profession), 9 (determination of the applicable Social Security legislation) and 11 (access to health care).

These articles will not enter into force if a future relationship agreement between the EU and the United Kingdom that addresses the above points has entered into force on January 1, 2021. However, if it is provisionally applied and not ratified, they will come into force. The above-mentioned reservations will not apply to Gibraltar.

Professional and labor relations:

(i) Suspension of the measures when 2 months have elapsed since the RDL came into force, except as provided in Final Provision 6 if the competent authorities do not grant reciprocal treatment to Spanish nationals in the United Kingdom or Gibraltar.

(ii) United Kingdom nationals who, on December 31st, 2020, were permanently exercising a profession or professional activity in Spain for which access and exercise was required to be a national of a Member State, they could continue to exercise it under the same conditions and without the need to carry out additional formalities. Likewise, for Spanish nationals or nationals of a Member State established in the United Kingdom.

(iii) In the case of temporary or occasional professions or activities in Spain, they may continue to do so for the

exclusive purpose of complying with current contracts entered into before January 1, 2021.

(iv) The auditors and audit companies registered in the Official Register of Account Auditors as of December 31st, 2020 will not be affected by the change in the United Kingdom during 2021.

(v) With regard to temporarily posted workers in the context of the provision of services, Spanish companies which have temporarily posted workers in the UK or Gibraltar on January 1st, 2021 shall continue to apply the United Kingdom legislation. Workers from companies in the UK or Gibraltar who are temporarily posted in Spain before December 31st, 2020, may continue the period provided for without prior authorization. In the event of an extension, authorization will be required.

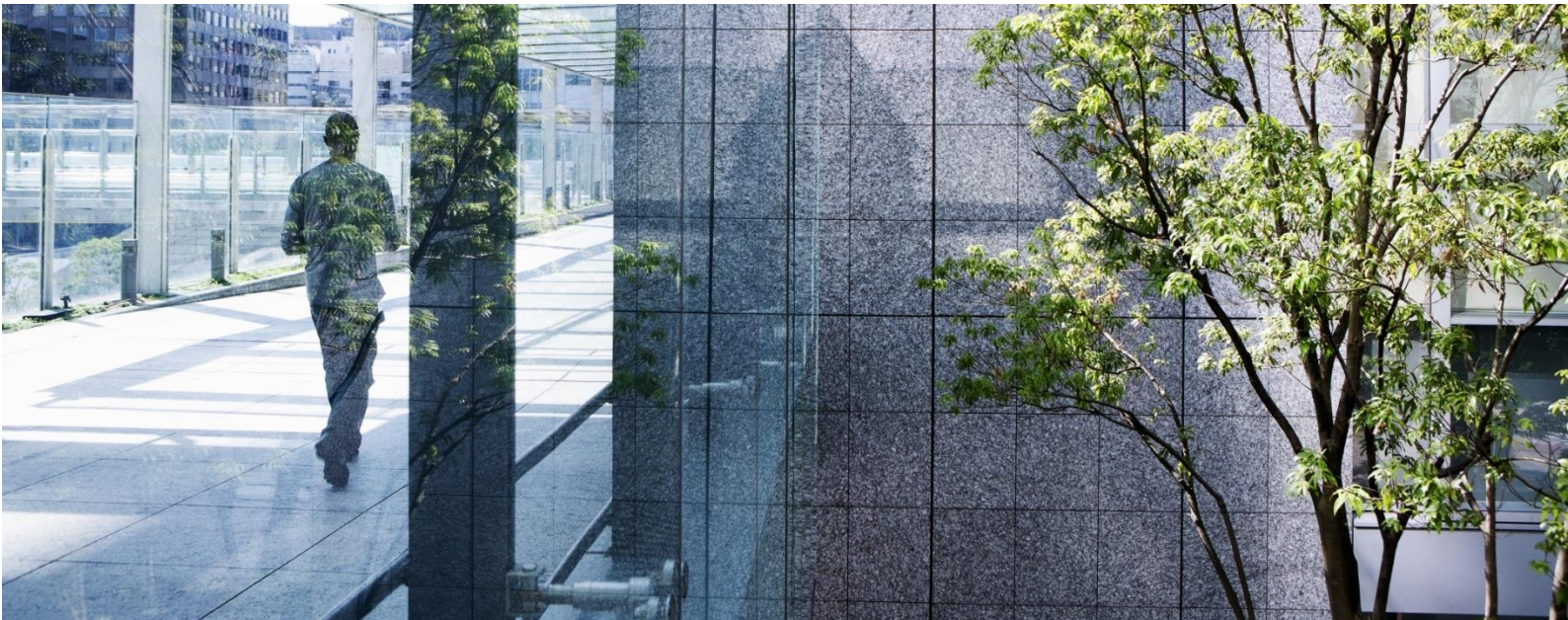
Health care: A series of new rules are established, which deadline is June 30th, 2021.

Continuity of financial services (contracts for the provision of banking, securities, insurance or other services) provided in Spain by an entity domiciled in the United Kingdom. As from January 1st, 2021, to the financial entities of United Kingdom, the regime provided for in the sectorial legislation for third state entities will be applied, and new authorization may be required.

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

Contacts

Clementina Barreda, Partner, Mazars
Tel: 915 624 030
clementina.barreda@mazars.es



Newsletter coordinated and edited by Clementina Barreda and Paula Mos Rivademar

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