



Corporate Law newsletter

Outstanding regulation developments

Urgent measures. Consumers. Royal Decree-Law 3/2021, of February 2nd, adopting measures to reduce the gender gap and other matters in the Social Security and economic field. [Full Text.](#)

Electricity. Circular 2/2021, of February 10th, of the National Commission for Markets and Competition, which establishes the methodology and conditions for the labelling of electricity to inform about the origin of the electricity consumed and its impact to the environment. [Full Text.](#)

Account Auditing. Technical standards. Resolution of February 10th, 2021, of the Institute of Accounting and Account Auditing, issuing rules for the recording, valuation, and preparation of the annual accounts for the recognition of income from the delivery of goods and the provision of services. [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

- **Sanitary Material.** Order CSM/115/2021, of February 11th, establishing the information and marketing requirements for hygienic masks. [Full Text.](#)
- **Exceptional Measures.** Order PCM/118/2021, of February 11th, publishing the Agreement of the Council of Ministers of February 9th, 2021, extending the Agreements of the Council of Ministers of December 22, 2020 and February 2, 2021, by which, respectively, exceptional measures are established to limit the spread and infection by COVID-19, by limiting direct flights and passenger ships between the United Kingdom and Spanish airports and ports; and flights between the Federative Republic of Brazil and the Republic of South Africa and Spanish airports. [Full Text.](#)
- **Sanitary Measures.** Order SND/133/2021, of February 17th, on the quarantine conditions to which persons from the Federative Republic of Brazil and the Federal Republic of South Africa must be subjected upon their arrival in Spain, during the sanitary crisis caused by COVID-19. [Full Text.](#)
- **International Agreements.** International administrative agreement for accession to the Multilateral Agreement on the exchange of microdata in the context of statistics on trade in goods within the European Union. [Full Text.](#)
- **Gas System.** Resolution of February 11th, 2021, of the National Commission for Markets and Competition, which establishes the remuneration for the gas year 2021 (from January 1st to September 30th, 2021) of the companies that carry out the regulated activities of liquefied natural gas plants, transport and distribution. [Full Text.](#)
- **Deposit Guarantee Fund. Affiliated entities.** Circular 2/2021, of January 28th, of the Bank of Spain, amending Circular 8/2015, of December 18th, of the Bank of Spain, to the entities and branches assigned to the Deposit Guarantee Fund for Credit Institutions, on information to determine the calculation bases of the contributions to the Deposit Guarantee Fund for Credit Institutions. [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

DGSJFP. Refusal to register dismissal of a Director. Resolution of February 10th, 2021. [Full Text.](#)

By the present resolution, the registration of the dismissal of the Joint Director of a Company is claimed. The registrar suspended the registration for the following reasons: (i) the company's sheet in the Commercial Registry is closed for failure to deposit the annual accounts (Article 282 LSC and 378 RRM); (ii) the company's sheet is provisionally closed by an agreement of the Tax Office (Art. 119 LIS and 96 RRM); however, the dismissal of a company's director is exempted from such closures, and (iii) the Tax Identification Number (NIF) of the company has been revoked. The DGSJFP dismisses the appeal filed, not for the first two reasons, which would not prevent the dismissal of a director, but for the revocation of the NIF, since the sixth additional provision of the General Tax Law provides that when the revocation is referred to an entity, the public registry in which the entity is registered, depending on the type of entity in question, will issue a marginal note in the Sheet open to the entity affected by the revocation, stating that, henceforth, no registration affecting the entity may be made, unless such number is reinstated or a new tax identification number is assigned. Therefore, the Director cannot be dismissed until the NIF is recovered.

DGSJFP. Refusal to register a deed of appointment and delegation of powers of a managing director. Resolution of February 10th, 2021. [Full Text.](#)

In the deed which has motivated this appeal, a resolution of the Board of Directors of a Limited Liability Company is raised to a public deed, by which a managing director is appointed. All the legal and statutory powers that may be delegated are granted to him, with the particularity that the delegated powers whose economic power content was greater to one million euros per transaction may only be exercised jointly, with one of two other persons. The registrar understood that the representative powers of the managing director could not be restricted with limitations opposable to third parties, due to the typical content of the power of representation of the company. The DGSJFP dismisses the appeal, understanding that the present limitation may have a purely internal effectiveness (in the scope of the liability claim that the company could assert against the managing director who has exceeded

his powers). However, the DGSJFP also understands that there would be no obstacle to registering such limitation if the delegation agreement were to expressly exclude the provisions of art. 234 LSC, thus eliminating all ambiguity and uncertainty.

DGSJFP. Deposit of annual accounts of a Limited Liability Company. Resolution of February 5th, 2021. [Full Text.](#)

The filing of the annual accounts of a Limited Liability Company was denied. The company had provided the document of service providers, without showing its prior registration in the Registry of Services to Companies and Trusts. The DGSJFP dismisses the appeal and reminds that, depending on the accounting documents to be submitted for their deposit, on the sheet where these are identified, the corresponding boxes must be filled, depending on the documents submitted. Therefore, it is not mandatory to check every box, but only those related to the documents submitted. In addition, if the document on services to third parties is to be presented, is because the person is obliged to do so, as it is registered as a service provider. The DGSJFP concludes that, in this case, the appellant, who had marked the box and presented the accounting document without being registered in the Registry, makes some allegations that cannot be upheld, in addition to the fact that in the qualification note he had already been warned that, in the event of not being a Service Provider to Companies and Trusts, the documents should not be included in the telematic submission.

Remarkable Case Law

Ruling of the Supreme Court of February 8th, 2021. [Full Text.](#)

The Civil Chamber of the Supreme Court discusses whether the inclusion on a file of defaulted debtors of a person can be considered as a legitimate intrusion on the honor of the person included and the requirements for it. The SC understands that there is no illegitimate intrusion in the honor of such person, since the inclusion in the file of defaulted debtors has been made in accordance with Law complying with the provisions of LO 3/2018, of December 5, on the protection of personal data and guarantee of digital rights and the RGPD. Furthermore, it considers that, due to the principle of data quality, personal data cannot be included in the registers of defaulters because of uncertain, doubtful or disputed debts, but it does not mean that any opposition to the payment of a debt, regardless of how unjustified it may be, implies that the debt is uncertain or doubtful, because in that case the certainty and enforceability of the debt would be left to the exclusive discretion of the debtor, who would only need to question its origin to make it uncertain. Therefore, the appeal is rejected, confirming the appealed ruling, which considered the debt to be true and did not consider the intrusion into the person's honor.

Ruling of the Supreme Court of February 9th, 2021. [Full Text.](#)

The present ruling establishes the qualification to be given in an insolvency proceeding to a claim arising from the right of separation of a shareholder (art. 353 LSC). First of all, the SC considers that the status of shareholder is lost as soon as the reimbursement of the shareholder's quota is paid or deposited, so that the notification to the company is only a condition for the exercise of the right of separation. In addition, it is discussed whether the separating shareholder is a person especially related to the insolvency proceedings due to his circumstances (art. 348 bis LSC and art. 92.5^o LC), in order to classify his credit as subordinated. In this sense, the SC considers that, with regard to the moment to be taken into account for the subordination of a credit, the concurrence of the circumstances that make it a person especially related to the debtor makes more sense that it is referenced to when the legal act whose bankruptcy relevance is to be specified

arises. Thus, when the claim arising from the right of separation arose, that is, when the company received the notice of separation, its holder still had the status of a person specially related to the debtor. Therefore, the Chamber establishes that the credit derived from a right of separation of a shareholder must be subordinated by the person exercising it.

Ruling of the Supreme Court of February 9th, 2021. [Full Text.](#)

The Civil Chamber of the SC discusses whether a television channel must remunerate the Association for the Management of Intellectual Rights (AGEDI) and Performers, Management Entity of Spain (AIE) with the equitable and sole remuneration contemplated in articles 108.4 and 116.2 of the Law on Intellectual Property if a public communication of audiovisual recordings containing the fixation of audiovisual works in which phonograms or reproductions of such phonograms have been incorporated is carried out. The SC resolves this appeal based on what was established by the CJEU in a prejudicial question that was submitted to it. In this sense, it is determined that users (in our case, the television channel), do not have to pay the single equitable remuneration when they make a public communication of audiovisual recordings containing the fixation of audiovisual works in which phonograms or reproductions of such phonograms have been incorporated. In conclusion, the SC considers that this communication does not generate the right of remuneration in favor of artists and performers and producers, upholding the appeal.

Review – Royal Decree-Law 3/2021, of February 2nd, adopting measures to reduce the gender gap and other matters in the Social Security and economic field.

Last February 3rd, Royal Decree-Law 3/2021, adopting measures to reduce the gender gap and other matters in the Social Security and economic field (hereinafter, “RDL”) was published in the BOE.

Among other aspects, the new regulation pursues a **triple objective**:

1. To reinforce the strength and viability of the Social Security system, while acting against the gender gap manifested in pensions, through the reform of Article 60 of the Consolidated Text of the General Social Security Law.
2. To improve the protective mechanisms in favor of the groups that need it most, by modifying on the one hand Royal Decree-Law 20/2020, of May 29, which establishes the minimum vital income, and improving, on the other hand, the temporary disability regime for health and social-health personnel.
3. To guarantee the sufficiency of resources for families and self-employed workers, extending the period in which they can enjoy mortgage moratoriums and granting public guarantees through the Official Credit Institute (*Instituto de Crédito Oficial*).

By this new regulation, the following new elements are introduced:

1. Moratoriums on loans

Coverage and application deadlines for moratoriums are extended until March 30, 2021 for households, workers, vulnerable self-employed and tourism and transport companies. It is allowed to request the granting of any moratoriums up to a maximum limit of 9 months. Therefore, those who have not yet applied can apply for it and those who have applied for it can extend it until the maximum deadline is reached.

2. Pensions for women with children

An additional complement to contributory pensions is established in favor of women who have had children and who are beneficiaries of a contributory retirement, permanent disability or widow's pension, who will be entitled to a complement for each of the following children.

3. Minimum Vital Income

A series of changes are established which directly extend the Minimum Vital Income, indicating the requirements for its application, the characteristics of the applicant and possible causes for the suppression of this right. All this with the purpose of adjusting the regulation to the needs that have become evident during the time it has been applied.

4. Self-employed workers

RD-Law 2/2021 is amended due to the termination of self-employed workers. The following main lines are established in this respect: (i) the cessation of the obligation to pay contributions is linked to the month in which the application for cessation of activity is filed, determined by administrative resolution; (ii) it facilitates taxation by objective estimation, and (iii) it specifies the period of accrual of the extraordinary benefit for cessation of activity.

5. Health professions

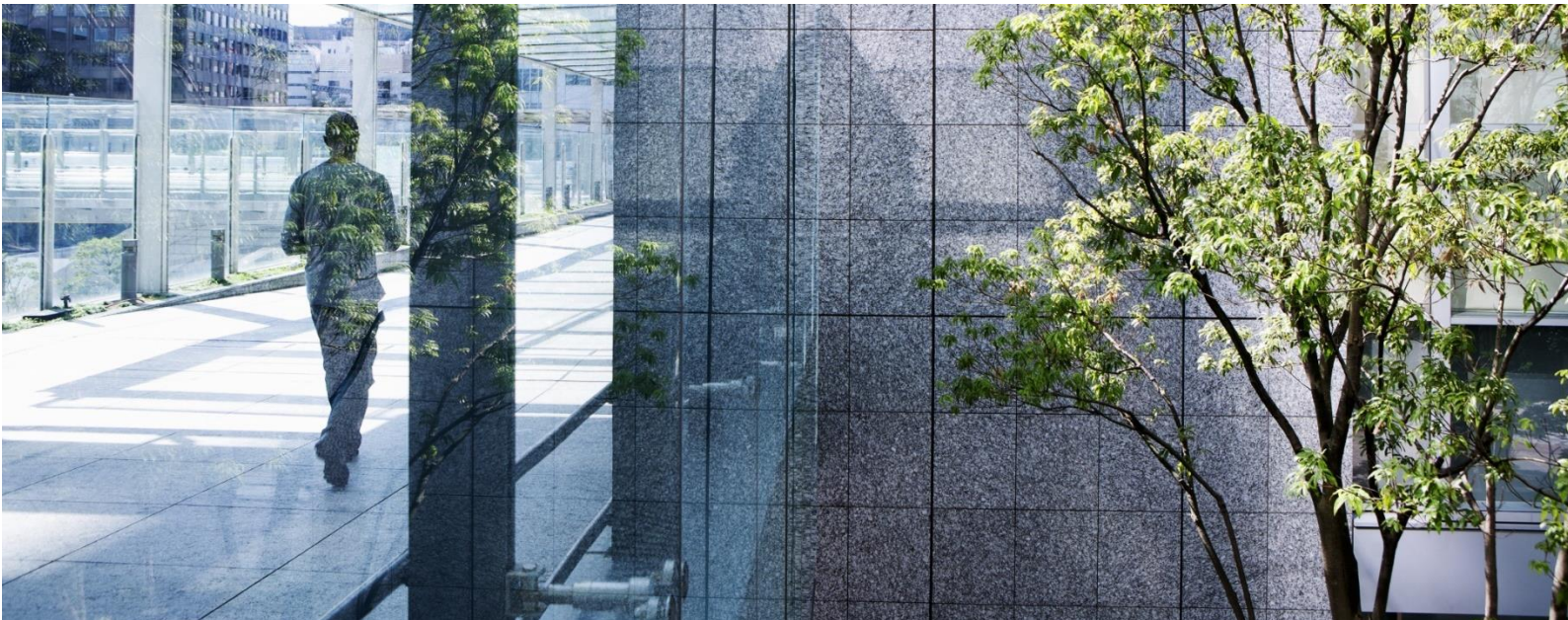
The most relevant aspect in this respect is that SARS-CoV-2 infection is considered an occupational disease, granting healthcare workers the same benefits in the Social Security system as those provided to other persons affected by an occupational disease.

This regulation came into force on February 4, 2021.

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

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