

Corporate Law newsletter

Outstanding regulation developments

Corporate Companies. Law 5/2021, of April 12th, which amends the consolidated text of the Spanish Companies Act, approved by Royal Legislative Decree 1/2020, of July 2nd, 2010, and other financial regulations, with respect to the promotion of long-term shareholder involvement in listed companies. [Full Text.](#)

Urgent measures. Royal Decree-Law 7/2021, of April 27th, on the transposition of European Union directives in the areas of competition, prevention of money laundering, credit institutions, telecommunications, tax measures, prevention and remediation of environmental damages, posting of workers in the provision of transnational services and consumer defence. [Full Text.](#)

Complementary measures. COVID-19. Royal Decree-Law 6/2021, of April 20th, adopting complementary measures to support companies and self-employed workers affected by the pandemic of COVID-19. [Full Text.](#)

For further information, please consult [here](#) the section of the BOE dedicated to the COVID-19 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

- **Exceptional measures.** Law 4/2021, of April 12th, regulating a recoverable paid leave for employees who do not provide essential services in order to reduce the mobility of the population in the context of the fight against COVID-19. [Full Text.](#)
- **Labour measures. COVID-19.** Law 3/2021, of April 12, which adopts complementary measures, in the labour field, to mitigate the effects derived from COVID-19. [Full Text.](#)
- **Tax procedures.** Royal Decree 243/2021, of April 6th, amending the General Regulations on tax management and inspection actions and procedures and on the development of the common rules for tax application procedures, approved by Royal Decree 1065/2007, of July 27th, in transposition of Directive (EU) 2018/822 of the Council, of May 25th, 2018, amending Directive 2011/16/EU, as regards the automatic and compulsory exchange of information in the field of taxation in relation to cross-border mechanisms subject to communication of information. [Full Text.](#)
- **Recovery, Transformation and Resilience Plan.** Resolution of April 29th 2021, of the Sub secretariat, publishing the Agreement of the Council of Ministers of April 27th, 2021, approving the Recovery, Transformation and Resilience Plan. [Full Text.](#)
- **Insurance.** Royal Decree 287/2021, of April 20th, on the formation and submission of statistical-accounting information of insurance and reinsurance distributors. [Full Text.](#)
- **Grants.** Order HAC/348/2021, of April 12th, which specifies the criteria for the allocation of direct aid to the self-employed and companies in application of the provisions of Title I of Royal Decree-Law 5/2021, of March 12, on extraordinary measures to support business solvency in response to the COVID-19 pandemic. [Full Text.](#)
- **CNMV.** Circular 1/2021, of March 25th, of the National Securities Market Commission, on accounting standards, annual accounts and financial statements of Investment Services Companies and their consolidated groups, Management Companies of Collective Investment Institutions and Management Companies of Closed-Ended Entities. [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. Capital decrease due to the amortization of subscribed and unpaid shares. Resolution of March 30th, 2021. [Full Text.](#)

The DGSJFP analyses the qualification of the registrar in which, in a capital reduction by amortization of subscribed and unpaid shares of a corporation ex. art. 84 LSC, it had required the allocation of the reserve provided for in art. 335.c LSC. The DGSJFP considers that the aforementioned art. 335.c) LSC is applicable in cases in which the company previously acquires the shares free of charge, in order to subsequently amortize them; in which, therefore, the shares belong to the Company itself. However, Article 84 of the LSC regulates the process in the event of the failure of an attempt to collect an outstanding payment of shares, which do not belong to the Company, but to a defaulting shareholder, in which case, the law merely establishes the obligation to reduce capital in the event of a failed attempt to sell the shares, and without the need to set up any reserves. Therefore, and in short, it is confirmed that the regime for the redemption of treasury stock in Article 335 of the LSC does not apply to the case contemplated in Article 84 of the LSC.

DGSJFP. Incorporation of a Limited Liability Company. Resolution of March 10th, 2021. [Full Text.](#)

The General Directorate analyses the negative qualification of a registrar in considering that the activities described in article 2 of the bylaws constituted professional activities, and therefore the company had to adopt the form of a Professional Company. The General Directorate emphasizes the insufficient motivation on the part of the registrar for not having specifically indicated which specific activities he was referring to. In any case, the DGSJFP focuses its analysis on the appellant's grounds, which it supports by upholding the appeal, understanding that training, consultancy and advisory activities in the field of construction, engineering and architecture do not involve the exercise of the profession of engineer or architect, and therefore they should not be considered as such professional activities. Likewise, with respect to consulting, although it is gradually being defined as a socially typified professional activity, the legislator has not yet regulated it as a licensed profession subject to compulsory registration.

DGSJFP. Annual Accounts. Appointment of auditor. Resolution of March 11th, 2021. [Full Text.](#)

It is analyzed whether the appointment of the auditor of annual accounts that have been subject to voluntary consolidation corresponds to the administrative body or to the general meeting. The auditor had been appointed by the company's board of directors. However, the registrar refused the registration of such voluntary auditor on the grounds that the appointment of the auditor of the consolidated annual accounts of the group is the exclusive competence of the general meeting of the company. The DGSJFP states that, in the case of individual accounts, the competence may correspond to the administrative body, but for consolidated accounts, we must comply with article 42 of the Code of Commerce, concluding that, in view of the clarity of this rule, and even though the accounting consolidation has been voluntary, the competence for its appointment corresponds to the general meeting. Therefore, the appeal is dismissed, confirming the qualification of the Registrar.

Remarkable Case Law

Ruling of the Supreme Court of March 30th, 2021. [Full Text.](#)

The SC decides whether a fifteen-year waiting period is allowed for the content of the agreement proposal in the context of a company's insolvency procedure. Thus, Article 124.1.b) of the Insolvency Law (LC), which regulates the majorities required for the acceptance of the agreement, is not applicable, and instead article 100 of such law, which regulates the content of the agreement proposals without establishing any time limit to the waiting period, is applicable. The SC dismisses the appeal on the grounds that article 124 LC, when regulating the regime of majorities, contains a clear limitation to the content of the proposals of waiting and, as no extraordinary majority is established in said law for the case in which the agreement contains waiting periods of more than ten years, it must be concluded that the law excludes them from the content of the agreement. In this way, article 124.1 LC, integrates article 100 LC, in the sense of establishing a limit to the waiting proposals, which in no case can be longer than ten years.

Ruling of the Supreme Court of April 12th, 2021. [Full Text.](#)

In the present ruling, the SC resolves whether the inclusion of a Protected Denomination of Origin as part of a trademark (“*LAR DE DUERO*”) is in compliance with the law, in the event that such inclusion cannot give rise to error in the consumer. The registration of the trademark had been requested for products covered by a specific Denomination of Origin (which protects a specific class of wines), and the registration of the same had been refused. The SC considered that the refusal of the trademark was in accordance with the law, as it was prohibited by art. 5.1.g) of the Trademark Law (LM), since it could mislead the public regarding the nature, quality or geographical origin of the goods, since consumers may believe that the wines protected by the trademark are supported by the Designation of Origin. Furthermore, such prohibition must be interpreted in the sense that those signs that incorporate in the denominative element terms or words identifying or evoking a Denomination of Origin, which produce in consumers a false impression about the characteristics or true nature of the product or about its

quality or geographical origin, without the need to prove that a legitimate interest is pursued with the registration of the national trademark, are ineligible for trademark registration.

Ruling of the Supreme Court of April 14th, 2021. [Full Text.](#)

The SC rules on the right of withdrawal from a contract entered into with a consumer by e-mail and its exercise once the provision of the services have begun. It is discussed whether the withdrawal from the contract should be governed by article 1594 of the CC or by articles 92 et seq. of the TRLCU. The SC understands that, if the contract binding the parties was concluded without the simultaneous physical presence of the contracting parties, within the framework of a system of provision of services organized by the company, by means of a communication via internet and is not included in the list of exclusions of art. 93 TRLCU, it will be a distance contract signed with consumers. Therefore, there is a right of withdrawal by the consumer of 14 calendar days. In addition, the SC establishes that, in distance contracts, in the event that the consumer has consented to the trader to start the provision of services before the withdrawal period has elapsed and the provision has not been consummated, art. 108.3 TRLCU provides that the consumer must pay the trader the proportional amount of the part of the service already provided on the date on which he communicates the total withdrawal from the contract, withdrawal that will be calculated on the total price agreed or on the basis of the market value of the service already provided.

Review – Law 5/2021, of April 12th, which amends the consolidated text of the Spanish Companies Act, approved by Royal Legislative Decree 1/2020, of July 2nd, 2010, and other financial regulations, with respect to the promotion of long-term shareholder involvement in listed companies.

This regulation partially transposes into our legal system Directive (EU) 2017/828, amending Directive 2007/36/EC about the promotion of long-term shareholder involvement in listed companies and developing other regulatory improvements in the field of corporate governance and the functioning of capital markets.

Among its main new aspects, we must highlight the amendment of the [Consolidated Text of the Spanish Companies Act](#), mainly for listed companies (except for some, such as the telematic meetings that apply to all companies), among which we highlight the following:

1. Loyalty shares.

A new provision is introduced whereby the bylaws of listed companies may authorize the creation of loyalty shares. These give a double vote to each share held by the same shareholder for at least two consecutive years, which may be computed both for voting purposes and for the computation of the quorum.

This is intended to encourage long-term investments. However, as they imply a break between the participation in the capital stock and the right to vote, they could become an instrument of abuse of the dominant position by the majority shareholders.

2. Appointment and remuneration of directors.

It is established that the directors of listed companies must only be natural persons. However, this will only

apply to appointments, including renewals that take place after May 13th.

In addition, the new remuneration policies must be submitted to the shareholders' meeting prior to the end of the last fiscal year in which they are in force and will be applied for a maximum period of three fiscal years.

3. Share capital increases.

To facilitate investment, share capital increases in listed companies are simplified and accelerated. For example, to exclude the preemptive subscription right in issues for less than 20% of the capital, the need for an independent expert's report is excluded, or the need to state in the issue resolution the possibility of incomplete subscription as a requirement for the effectiveness of the increase is eliminated.

4. Related transactions.

A series of novelties are introduced in the related-party transactions of listed companies, highlighting the obligation to publish relevant information regarding those transactions that exceed certain quantitative thresholds, accompanied by a report prepared by an audit committee.

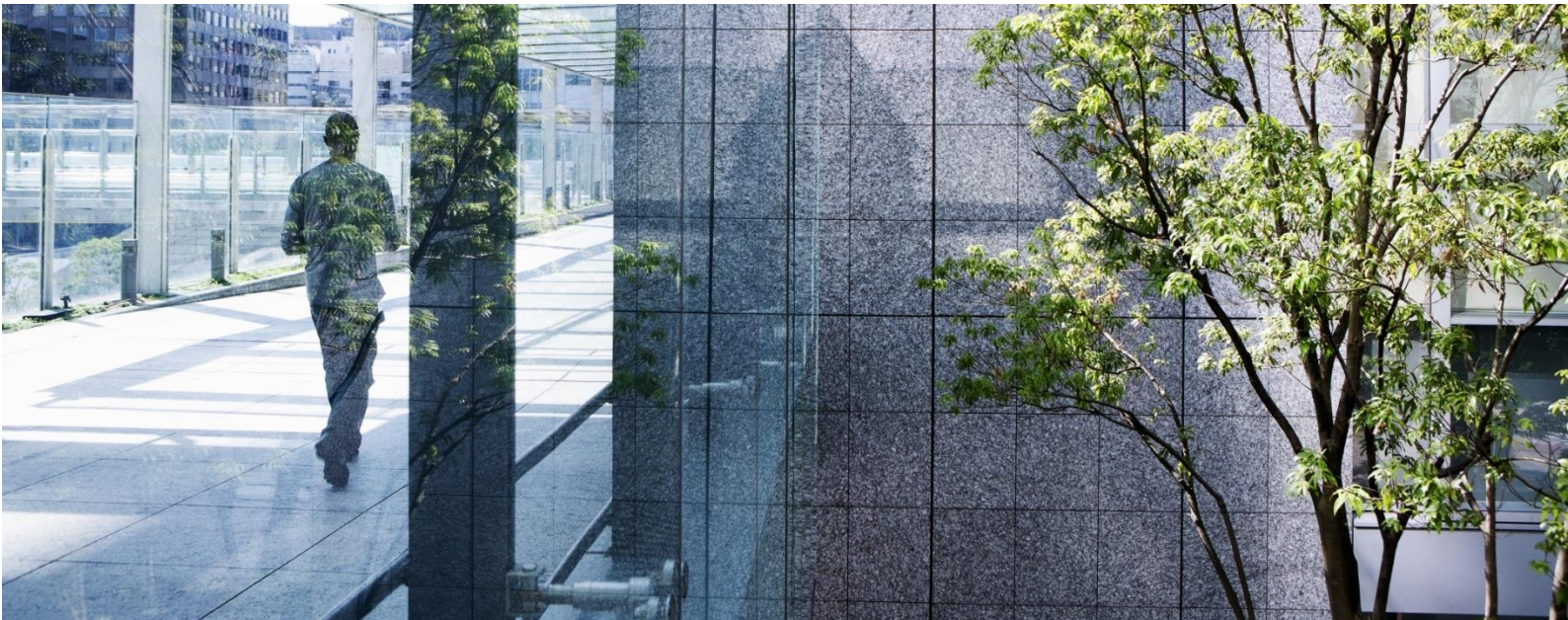
5. Telematic Shareholders Meetings

Article 182 of the LSC is amended and an article 182 bis is included, in order to regulate the requirements applicable to all companies, so that telematic meetings can be held, in line with what had been occurring as a result of the pandemic.

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

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