



## Corporate Law newsletter

### Outstanding regulation developments

**Remote work.** Law 10/2021, of July 9<sup>th</sup>, on distance work. [Full Text.](#)

**Urgent Measures.** Royal Decree-Law 14/2021, of July 6<sup>th</sup>, on urgent measures to reduce the temporary nature of public employment. [Full Text.](#)

**Commercial Registry. Models of annual accounts.** Order JUS/794/2021, of July 22<sup>nd</sup>, approving the models for filing in the Commercial Registry the annual accounts of the parties obliged to publish them. [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](mailto:mazars.taxlegal@mazars.es)

## Other outstanding regulation development

- **Commercial Registry. Models of annual accounts.** Order JUS/793/2021, of July 22<sup>nd</sup>, approving the models for filing in the Commercial Registry the consolidated annual accounts of the parties obliged to publish them. [Full Text](#).
- **European Public Prosecutor's Office.** Organic Law 9/2021, of 1 July, implementing the Regulation (EU) 2017/1939 of 12 October 2017, establishing enhanced cooperation for the creation of the European Public Prosecutor's Office. [Full Text](#).
- **Account Auditing. Technical standards.** Resolution of 26 July 2021, of the Spanish Accounting and Auditing Institute, by which it is submitted for public information the Technical Auditing Standard, resulting from the adaptation of the International Auditing Standards for their application in Spain, "Use of the work of internal auditors", ISA-ES 610 (revised). [Full Text](#)
- **Regulation of the Internal Regime.** Resolution of 29 July 2021, of the Board of the National Securities Market Commission (CNMV), amending the Regulation of the Internal Regime of the Commission. [Full Text](#).
- **Civil Registry. Computerised management.** Resolution of 29 July 2021, of the General Directorate of Legal Security and Public Faith, by which the effective entry into service of the computer application Dicireg in the General Office of Madrid is agreed, for its operation in accordance with the provisions contained in Law 20/2011, of 21 July, on the Civil Registry. [Full Text](#).
- **Tax fraud.** Law 11/2021, of 9 July, on measures to prevent and combat tax fraud, transposing Council Directive (EU) 2016/1164, of 12 July 2016, laying down rules against tax avoidance practices that directly affect the functioning of the internal market, amending various tax rules and on gambling regulation. [Full Text](#).
- **Construction materials.** Royal Decree 470/2021, of June 29, which approves the Structural Code. [Full Text](#).
- **Medical devices.** Royal Decree 588/2021, of July 20, amending Royal Decree 1662/2000, of September 29, on "in vitro" diagnostic medical devices, in order to regulate the sale to the public and advertising of COVID-19 self-diagnostic products. [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. Constitution of a Limited Liability Company. Resolution of 21 July 2021. [Full Text.](#)

A limited liability company is constituted in which one of the grantor natural persons intervenes in his own name and in his own right and, in addition, as the Sole Director of one of the two founding companies. The registrar suspends the registration on the grounds that this grantor is involved in a case of self-contracting, as he is the only person carrying out the act, in the dual representation that converges in his own person, and that of the founding company. The registrar considers that the fact that the articles of association designate himself as director of the newly created company generates a conflict of interest between the representative and the represented party. The DGSJFP upholds the appeal and clarifies that, in relation to the appointment as director of the new company, the fact that the representative of one of the founding companies is also a party to the contract as founding shareholder does not entail a risk for the represented company, since the appointment of a director is part of the business content and does not entail a risk for the represented company, as it is not an irrevocable contractual agreement, but may be modified at any time through the resolutions of the general meeting..

### DGSJFP. Closure of registration sheet. Resolution of 29 July 2021. [Full Text.](#)

It is disputed the qualification of a deed in which the agreements of the general meeting of a company were elevated to public deed, terminating the sole administrator and appointing another administrator. The suspension of the qualification was based on three grounds: (i) the company was provisionally deregistered in the Index of Entities of the Ministry of Finance; (ii) the company's corporate sheet was closed due to failure to file the corresponding annual accounts (art. 378 RRM); (iii) the company was listed with a

cancelled VAT number. In this sense, the DGSJFP points out that, if the closure of the registry was only due to non-compliance with the filing of the annual accounts, registration would proceed but, in this case, this is not possible because the register has also been closed as a result of the provisional deregistration of the company in the Index of Entities. Therefore, if the marginal note of closure due to provisional cancellation in the Index of Entities is in force, no entry can be made on the sheet opened to the affected company, except for certain exceptions that do not occur in this particular case, nor can the termination of the director be recorded. In addition, the effect of total closure of the corporate page is the same both in the case of provisional deregistration in the Index of Entities and in the case of revocation of the tax identification number.

### DGSJFP. Change of shareholders of a professional company. Resolution of June 29<sup>th</sup>, 2021. [Full Text.](#)

The DGSJFP analyzes the case of a sale and purchase of shares in an SLP by means of which 360 "general class" or "non-professional shareholders" shares are sold to a person who was already a professional shareholder of such company and holder of the rest of the shares, so that the latter becomes the sole shareholder. In the opinion of the registrar, in order to register this deed, the wording of the article of the articles of association requiring that the shares to be transferred correspond to a non-professional partner must be modified at the same time. However, the DGSJFP upholds the appeal and establishes that in this case, all the shares are equal, and that the transfer from a non-professional to a professional partner does not alter the set of rights resulting from their ownership, so there is no change of "type of shareholding". Another issue is that the transfer of a shareholding from a professional partner to a non-professional partner is subject to specific requirements and may entail different legal consequences than the transfer between non-professionals.

## Remarkable Case Law

### **Ruling of the General Court of the European Union (Fifth Chamber, Extended Composition) of 7 July 2021 (Case T-668/19).**

#### **[Full Text.](#)**

The General Court rules on the registration of a sound trademark presented in audio format. In this regard, the Court states that the criteria for assessing the distinctive character of sound trademarks are the same as those applicable to other categories, and that a sonorous sign must possess a certain strength enabling the relevant consumer to perceive it as a trademark and not as an element of a functional or indicative nature with no intrinsic characteristics of its own. In this case, a request had been made to record the sound produced when a beverage can is opened. The Court notes that the sound emitted when opening a can is considered to be a purely technical and functional element, where the opening of a can or a bottle is intrinsic to a technical solution linked to the handling of beverages for consumption and will therefore not be perceived as an indication of the commercial origin of such products. Therefore, the General Court concludes that an audio file containing the sound produced when a beverage can is opened cannot be registered as a trademark for different beverages and for metal containers for transport and storage, as it has no distinctive character.

### **Ruling of the Supreme Court of July 27<sup>th</sup>, 2021. [Full Text.](#)**

The SC analyzes whether Article 135 LC, which delimits the subjective scope of effectiveness of the creditors' agreement, is also applicable, in addition to those jointly and severally liable with the insolvent party and its sureties or guarantors, to third parties that have provided in rem guarantees in favor of the creditor to secure the insolvent party's obligations. The SC understands that this article is applicable as long as the creditor has not voted in favor or adhered to the agreement, since this ensures that its approval will not affect the creditor's rights against third parties, whether they are jointly and severally liable with the insolvent party or those who have provided a personal or in rem

guarantee. The reason lies in the fact that the sacrifice made by the creditor who does not accept the proposal, being dragged along by what has been agreed by other creditors with the debtor, is justified within the insolvency proceeding and for the purpose of facilitating the continuity of the economic activity of the insolvent debtor. In short, if the legislator provides for the possibility of excluding the effects of the agreement with respect to guarantors, sureties or joint and several obligors of a personal nature, because these guarantees are conceived precisely to ensure payment in the event of the debtor's insolvency, as is the case of insolvency proceedings, there is even more reason to admit the non-binding nature of the agreement with respect to security interests over assets not belonging to the insolvent party, given the privileged position of the insolvency law with respect to secured creditors.

### **Ruling of the Supreme Court of July 28<sup>th</sup>, 2021. [Full Text.](#)**

The SC rules on a conflict in the resolution of a franchise agreement between a franchisor and its franchisee, a natural person. One of the issues to be debated was the nullity of the franchise agreement for containing a price fixing clause. In this regard, the SC states that, if a franchise agreement contains a price fixing clause, such conduct is considered restrictive of competition. And this is so because the franchisor may make a recommendation or impose a maximum price, in the sense that there is a margin for the franchisee, but not a price fixing in the strict sense of the word. Therefore, if a contractual clause is established in which the supplier merely imposes a maximum selling price or recommends a selling price and, in this way, the reseller has a real possibility of determining the selling price to the public, such a clause may benefit from the exemption of both Regulation 1984/83 and Regulation 2790/99. In other words, in order for the exemption to apply, it must only be a recommendation or imposition of a maximum price, but not price fixing in the strict sense.

## Review – Resolution of the Spanish Data Protection Agency of 27 July 2021.

The Spanish Data Protection Agency ("AEPD") has imposed a sanction of EUR 3.15 million on a Spanish supermarket chain for the use of facial recognition systems, in a ruling issued on 27 July 2021.

The system, which the supermarket chain had already implemented as a pilot project in 48 of its establishments, detected whether the identified person had a restraining order or similar judicial measure in force.

The Provincial Court of Barcelona had already ruled on the implementation of this system, in its Order 72/2021 of 15 February 2021, concluding that it was a "violation of privacy", and indicating that with this system "the public interest is not being protected, but rather, the private or particular interests of the company in question".

For its part, the AEPD has pointed out that the measure implemented violates the General Data Protection Regulation ("GDPR"), specifically the articles relating to the processing of special categories of personal data (Article 9), to the licitness of the processing (Article 6), to the principle of data minimisation (Article 5.1.c), to the transparency of information, communication and modalities of exercising the data subject's rights (Article 12), to the information to be provided when personal data are obtained from the data subject (Article 13), to the data protection by design and by default (Article 25), and to the data protection impact assessment (Article 35).

The AEPD argues that, firstly, as it is an identification system that uses biometric data to identify univocally a specific person from among several, there is a processing of special categories of data, subject to the guarantees contained in Article 9 of the GDPR. In addition, the processing did not only affect people with final sentences and restraining orders, but also

any supermarket worker and customer, so it was a massive and remote facial recognition system.

For this reason, the AEPD concludes that such data processing *"is not authorised in accordance with article 9.2.g) of the GDPR and, furthermore, lacks a basis of legitimacy under article 6.1 of the GDPR and is contrary to the principles of necessity, proportionality and minimisation"*, pointing out that the use of this system cannot be based on the public interest, in the sense of protecting the security of supermarket customers, but rather responds to the private or particular interests of the company in question, so that *"a system would be installed in the private sphere that is not being used by the State Security Forces and Corps in pursuit of purposes of general interest"*.

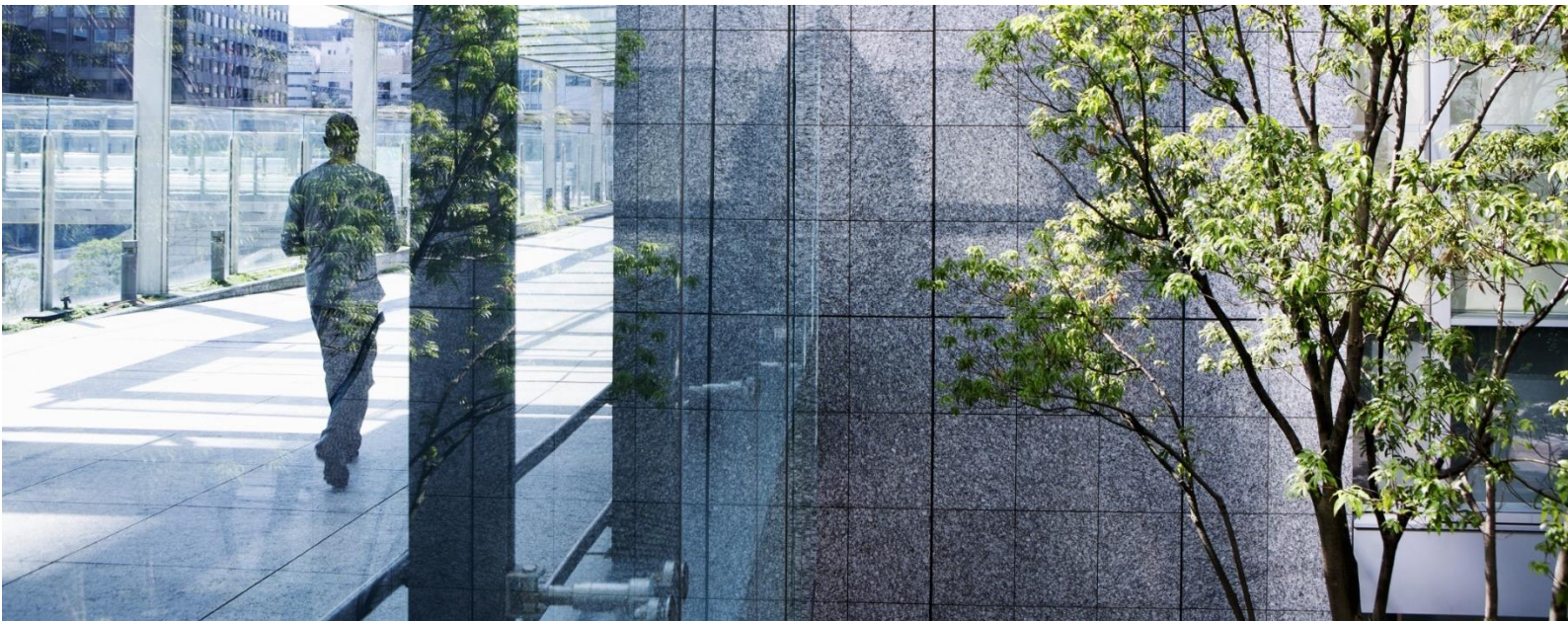
The AEPD also indicates that this processing exceeded what was strictly necessary, which in this case would be to keep those convicted under a restraining order or similar judicial measure away from the establishments in question, and that there was a lack of transparency in the information provided to potential customers and employees of the company warning of the use of this measure. Likewise, the AEPD considers that the supermarket chain carried out a deficient Privacy Impact Assessment (PIA), not taking into account a series of risks that could be generated by the measure.

Based on the above, the AEPD has imposed the aforementioned sanction of €3.15 million. The supermarket chain has agreed to pay the sanction, which has been reduced to €2.5 million as a result of voluntary payment.

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

## Contacts

Clementina Barreda, Partner, Mazars  
Tel: 915 624 030  
[clementina.barreda@mazars.es](mailto:clementina.barreda@mazars.es)



Newsletter coordinated and edited by Clementina Barreda and Paula Mos Rivademar

Mazars is an internationally integrated partnership, specialising in audit, accountancy, advisory, tax and legal services\*. Operating in over 90 countries and territories around the world, we draw on the expertise of 40,400 professionals – 24,400 in Mazars' integrated partnership and 16,000 via the Mazars North America Alliance – to assist clients of all sizes at every stage in their development.

\*where permitted under applicable country laws.

[www.mazars.com](http://www.mazars.com)