



# Corporate Law newsletter

## Outstanding regulation developments

**Lawyers and Court Attorneys. Professional societies. Economic measures. Telecommunications.** Law 15/2021, of 23 October, which amends Law 34/2006, of 30 October, on access to the professions of Lawyer and Court Attorney, as well as Law 2/2007, of 15 March, on professional societies, Royal Decree-Law 5/2010, of 31 March, which extends the validity of certain temporary economic measures, and Law 9/2014, of 9 May, General Telecommunications. [Full Text](#).

**Urgent measures.** Royal Decree-Law 23/2021, of 26 October, on urgent energy measures to protect consumers and introduce transparency in the wholesale and retail electricity and natural gas markets. [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

- **Listed public limited companies. Savings banks.** Circular 3/2021, of 28 September, of the National Securities Market Commission, amending Circular 4/2013, of 12 June, which establishes the models for the annual report on remuneration of directors of listed public limited companies and of the members of the board of directors and of the control committee of savings banks that issue securities admitted to trading on official securities markets; and Circular 5/2013, of 12 June, which establishes the models for the annual corporate governance report of listed public limited companies, savings banks and other entities that issue securities admitted to trading on official securities markets. [Full Text](#).
- **Subsidies.** Order ICT/1117/2021, of 9 October, which establishes the regulatory basis for subsidies to support Innovative Business Associations in order to improve the competitiveness of small and medium-sized companies and announces the call for applications for the year 2021, within the framework of the Recovery, Transformation and Resilience Plan. [Full Text](#).
- **Technical Auditing Standards.** Resolution of 14th October 2021, of the Spanish Accounting and Auditing Institute, publishing the Technical Auditing Standards resulting from the adaptation of the International Auditing Standards for their application in Spain, "Consideration of legal and regulatory provisions in the audit of financial statements", ISA-ES 250 (revised), "Identification and assessment of the risk of material misstatement", ISA-ES 315 (revised) and "Use of the work of internal auditors", ISA-ES 610 (revised). [Full Text](#).
- **Social protection.** Royal Decree-Law 21/2021, of 26 October, extending social protection measures to address situations of social and economic vulnerability. [Full Text](#).
- **Collective investment institutions.** Circular 2/2021, of 28 September, of the National Securities Market Commission, on statistical information requirements for money market funds in the European Union. [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. Appointment of co-managing administrators. Resolution of 8th September 2021. [Full Text](#).**

The DGSJFP analyses the refusal to register a corporate dissolution on the appointment of two joint administrators in an SA, adopted at a general meeting, with 75% of the shares in favour and the remaining 25% voting against. The DGSJFP confirms the refusal to register the resolution on the grounds that it had not been adopted by the reinforced majority required by the articles of association (qualified majority of more than 75% of the votes cast). The claimants argue that the shareholders representing the 25% of the share capital that voted against the resolution use their participations as right of control over any resolution to be adopted in the company. However, the DGSJFP states that, in this case, the 25% held by the minority is not held by a single shareholder, where it would be sufficient for just one of those shareholders to vote in favour of the resolution for it to be approved without unanimity, but rather that the 25% is made up of several shareholders. Finally, the DGSJFP dismisses the appeal on the basis that the necessary majorities for the approval of the resolution are not present and recalls that, although the bylaws may reinforce the legally stipulated majorities, in each capital distribution situation, the adoption of resolutions may require the support of all the shareholders.

**DGSJFP. Dissolution and appointment of the sole liquidator of a Limited Liability Company. Closing of the registration sheet. Resolution of 2nd September 2021. [Full Text](#).**

The registration of a public deed of the resolutions of the General Meeting of a Limited Liability Company dissolving the company, accepting the resignation of the sole director and appointing a liquidator is suspended. The suspension is based on the fact that the company's registration sheet was closed because it had been provisionally removed from the Ministry of Finance's index of

entities. According to the DGSJFP, the appeal cannot succeed because the exceptions to the closure rule do not include the resignation of directors, the dissolution of the company or the appointment of a liquidator. Furthermore, once the marginal note has been made, it cannot be undermined by the appellant's mere statement denying that on the date indicated the company was provisionally removed from the Ministry of Finance's index of entities, since such an entry enjoys the protection of the courts and produces all its effects until it is declared to be inaccurate (Articles 20.1 of the Commercial Code and 7.1 of the Regulation on the Commercial Registry). Finally, the DGSJFP indicates that the consequences of the closure of the register caused in the sphere of tax obligations cannot be confused with those of closure due to failure to file annual accounts, in respect of which the registration of the dismissal or resignation of directors is admitted as an exception, although not the appointment of those who are to replace them in that position.

**DGSJFP. Capital increase of a Limited Liability Company. Resolution of 29th September 2021. [Full Text](#).**

The DGSJFP ruled on the access to the Commercial Register of a capital increase paid up through the contribution of a property, whose ownership corresponds exclusively to the contributor, although it is encumbered with a right of use to his children and his ex-spouse, without the latter's consent. The DGSJFP upholds the appeal and revokes the contested classification because, in this case, the conditions required by art. 58 of the Spanish Companies Act for company contributions are met. Moreover, underlines that it is clear from the deed submitted that the rest of the shareholders and the administrator were aware of the rights being contributed and of the existence of the right of use and enjoyment in favour of the beneficiaries indicated, which were taken into consideration by them for the valuation of the contribution 'in natura' and the coverage of the capital figure (and, where appropriate, of the reserve for the share premium).

## Remarkable Case Law

**Ruling of the High Court of Justice of the European Union of 6 October 2021. Competition Law. Subsidiaries. [Full Text](#).**

The CJEU rules on the possibility of bringing a claim against a subsidiary for an infringement of EU Competition law committed by the holding company. In that regard, it states that where an infringement of article 101 TFEU has been established in respect of a parent company, the victim of that infringement may seek to establish the civil liability of a subsidiary of that holding company, provided that it proves, first, the economic, organizational and legal links between those two entities and, second, the existence of the economic, organizational and legal links between those two entities, organizational and legal links between those two entities and, secondly, the existence of a specific link between the economic activity of the subsidiary and the subject-matter of the infringement for which the parent company, of which the subsidiary constituted, with its parent company, an economic unit, has been held liable. The subsidiary must be able effectively to assert its rights of defense to prove that it does not perform the main activity, where the Commission has not adopted a decision under Article 101 TFEU, it may also contest the very reality of the alleged infringing conduct. On that basis, the CJEU concludes that Article 101 TFEU precludes national legislation which only automatically provides for the possibility of attributing liability arising from the conduct of one company to another company where the latter controls the former company.

**Ruling of the Supreme Court of 28 September 2021. Fees of the bankruptcy administrator. [Full Text](#).**

The SC rules on whether the time limitation established by the TD 3.<sup>a</sup> of Law 25/2015, of 18 September on the right of the administrators to receive remuneration during the liquidation period is applicable to insolvency proceedings in which the liquidation phase was opened prior to the entry into

force of this TD 3.<sup>a</sup>. This rule provides that, in general, the bankruptcy administrator's right to remuneration during the liquidation phase is limited to the first twelve months and, as from the thirteenth month, he is not entitled to accrue fees charged to the estate, unless authorized by the judge. The SC points out that, in this case, we would be dealing with a case of improper retroactivity, since, to the legal relationship of the insolvency administrator, whose regime, at the time the insolvency proceedings were opened, did not establish a time limit on the collection of fees during the liquidation phase, the insolvency judge applies the time limit on collection established by TD 3.<sup>a</sup> as from its entry into force. In this case, when TD 3 came into force, the liquidation phase had been open for more than ten months, so that under the new rule the remaining months will be considered to keep the liquidation open at a cost to the insolvency estate, and from then onwards, the insolvency administrator will cease to accrue fees, without this violating the rules prescribing non-retroactivity.

**Judgment of the Supreme Court of 28 October 2021. Community designs and models. [Full Text](#).**

The CJEU ruled on the question referred for a preliminary ruling as to whether the disclosure of an image of the entirety of a product must be considered as a separate disclosure or on a general basis. The CJEU states that designers are not obliged to disclose specifically each of the parts of their products for which they wish to benefit from protection of the unregistered Community design. On this basis, the CJEU states that Article 11.2 of Regulation n° 6/2002 must be interpreted as meaning that the disclosure to the public of images of a product, such as the publication of photographs of a vehicle, entails the disclosure to the public of a design of a part of that product, or of a component part thereof, as a complex product, provided that the appearance of that part or component part is clearly identifiable at the time of such disclosure, constituting a visible section of the product or of the complex product.

## Review – Summary of Interest: Ruling of the Supreme Court of 6th October 2021. Liability of the Corporate Director.

The Supreme Court (SC) defines the differences between the individual action and the corporate action that may be brought by a creditor against the company's director who has failed to fulfil his obligation to pay.

In the case at hand, the administrator of a company, shortly before filing the company's pre-bankruptcy application (and subsequent declaration of bankruptcy), made a large purchase from a supplier. On this basis, and even though the insolvency proceedings classified the purchase as fortuitous (without fault on the part of the director), the supplier company filed on the basis of article 241 LSC, a liability action against the administrator, as it considered that the placing of the order, shortly before the pre-insolvency application, meant that he already knew that the company was not going to pay for the purchase.

In this case, the SC did not consider that the administrator's conduct was negligent, since as soon as he became aware of the existence of serious economic difficulties in the company, he resorted to the appropriate pre-bankruptcy mechanism and, in view of its unfeasibility, he requested the voluntary bankruptcy of the company, which was declared fortuitous.

Furthermore, the SC recalls that the individual action for liability of the company director, regulated in art. 241 LSC, is different from that regulated in art. 236.1 LSC, pointing out that the individual action for liability is "*a type of liability for organic illicit, contracted by the directors in the performance of the functions of their position, and which constitutes a special case of non-contractual liability, with its own regulation in company law (art. 241 LSC), which specialises it within the generic one of art. 1902 CC*". Thus, in order for this type of liability to be considered, the following requirements

must be met: i) active or passive conduct of the directors; ii) that such conduct is attributable to the governing board as such; iii) that the conduct of the director is unlawful because it infringes the law, the articles of incorporation or does not conform to the standard or pattern of diligence required of an orderly businessman and a loyal representative; iv) the unlawful, culpable or negligent conduct is likely to cause damage; v) the damage caused is direct to the third party contracting, without the need to harm the interests of the company; and vi) there is a causal link between the unlawful conduct of the director and the direct damage caused to the third party.

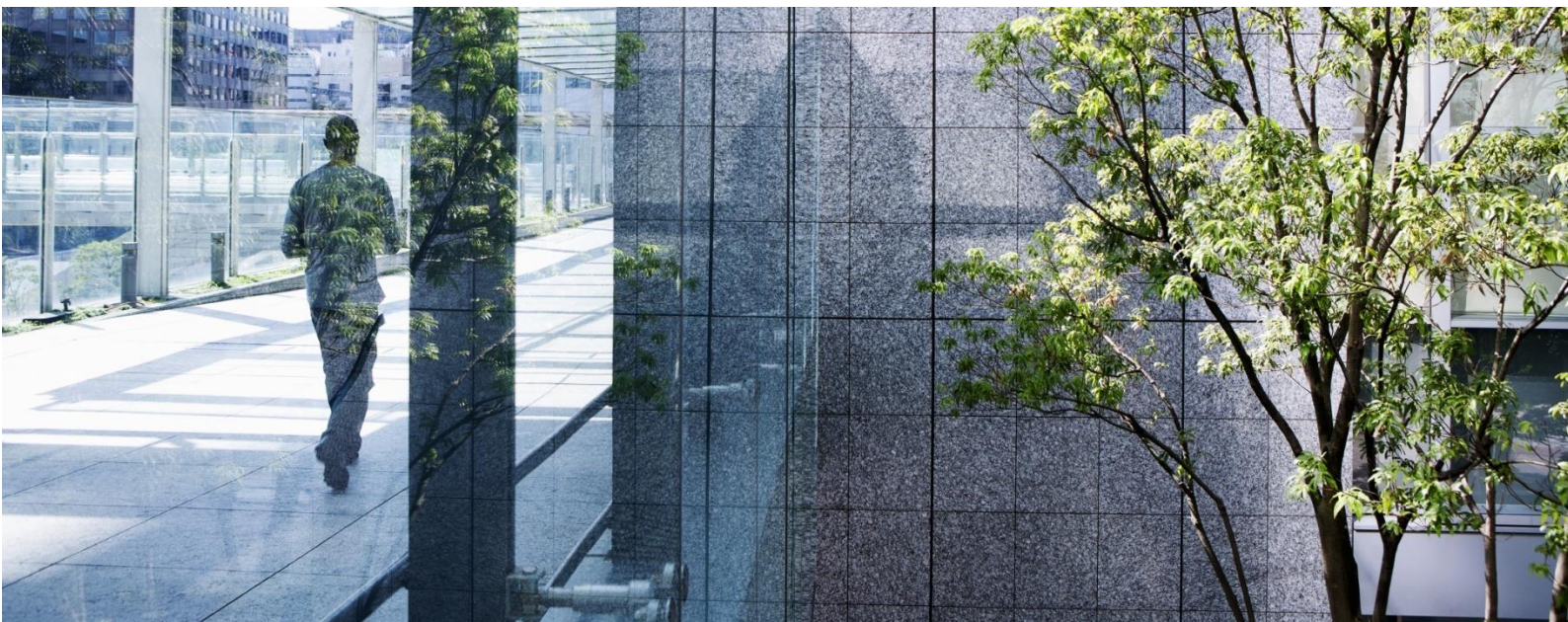
Furthermore, the SC points out that "*the individual liability of the directors for any breach of contract by the company or for the non-payment of any corporate debt, even if it has another origin, cannot be used indiscriminately*", but for this action to be successful, the conduct of the director to which the damage caused to the creditor is attributed must be clearly identified, and this damage must be direct, not indirect as a consequence of the company's insolvency. It is not possible to attribute liability to the directors for the non-payment of the company debts of a company that has entered into a situation of insolvency, so for the director to be liable to the shareholder or to the creditor who brings an individual action for liability under art. 241 LSC, it is necessary for the assets receiving the direct damage to be those of the person bringing the action, and the damage suffered by the company's assets is not direct, but indirect, and has repercussions on the shareholders or creditors.

In conclusion, the SC indicates that, although in certain cases it has been considered that the impossibility of the company's creditors to collect their claims is direct damage attributable to the company's directors, for this to be the case, very exceptional and qualified circumstances must be present, which in this case have not occurred.

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

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