

Corporate Law Newsletter

Outstanding regulation developments

Credit institutions. Bank of Spain, Circular 1/2022, of January 24th, to credit financial institutions, on liquidity, prudential rules and reporting obligations, and amending Circular 1/2009, of December 18th, to credit institutions and other supervised institutions, in relation to information on the capital structure and equity quotas of credit institutions, and on their branches, as well as on senior officers of supervised institutions, and Circular 3/2019 of October 22nd, exercising the power conferred by Regulation (EU) 575/2013 to define the significance threshold for overdue credit obligations. [Full text.](#)

Financial measures. Law 2/2022, of February 24th, on financial measures for social and economic support and enforcement of judgments. [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

International treaties. Instrument of ratification published in the Official State Gazette on February 2nd, 2022 amending the Protocol amending the Convention of July 29, 1960, on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of January 28, 1964 and by the Protocol of November 16, 1982, done at Paris on February 12, 2004. [Full text.](#)

Health measures. Royal Decree 115/2022, of February 8th, modifying the mandatory use of masks during the health crisis situation caused by COVID-19. [Full text.](#)

Urgent measures. Resolution of February 3rd, 2022, of the Congress of Deputies, ordering the publication of the Agreement on the validation of Royal Decree-Law 32/2021, of December 28, on urgent measures for the labor reform, the guarantee of employment stability and the transformation of the labor market. [Full text.](#)

Civil liability in the field of nuclear energy. BOE 28/2022, published on February 2nd. Instrument of ratification of the Protocol amending the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, done at Paris on 12 February 2004. [Full text](#)

Minimum interprofessional salary. Royal Decree 152/2022, of February 22nd, establishing the minimum interprofessional salary for 2022. [Full text](#)

Credit institutions and investment services companies. Asset management companies. Resolution of February 3rd, 2022, of the Congress of Deputies, ordering the publication of the Resolution validating Royal Decree-Law 1/2022, of January 18th, amending Law 9/2012, of November 14th, on the restructuring and resolution of credit institutions; Law 11/2015, of June 18th, on the recovery and resolution of credit institutions and investment services companies; and Royal Decree 1559/2012, of November 15th, which establishes the legal regime for asset management companies, in relation to the legal regime for the Asset Management. [Full text.](#)

Organization. Royal Decree 116/2022, of February 8th, which creates the Interministerial Commission on Consumption and determines its composition, functions and operating regime. [Full text.](#)

Interministerial Consumer Commission. Royal Decree 116/2022, of February 8th, which creates the Interministerial Commission for Consumption and determines its composition, functions and operating regime. [Full text.](#)

Agreement. Resolution of February 1st, 2022, of the General Comptroller of the State Administration, modifying that of 30 July 2015, issuing instructions for the exercise of permanent financial control. [Full text.](#)

Economic and financial control. Resolution of February 1st, 2022, of the General Comptroller of the State Administration, modifying that of 30 July 2015, which issued instructions for the exercise of permanent financial control. [Full text.](#)

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resignation of the sole administrator. Resolution of January 18th, 2022. [Full text.](#)

Resolution of the appeal against the Register's note of qualification, denying registration of the resignation from the post of Sole Director. The grounds for the refusal are Articles 117.1.k) and Additional Provision 6 of the General Tax Law, which refer to the impossibility of registering when the company is in a situation of deregistration in the Index of Entities of the Ministry of Finance, and due to revocation of the company's Tax Identification Number. Although the request to register the resignation of the director was initially upheld because it was an individual act (Articles 24 of the Notaries Act and 214 of the LSC), the DGSJFP finally rejected the appeal, thus affirming that the Registrar had acted correctly. In accordance with the provisions of the LIS, it is established that the provisional deregistration of a company in the IEAE entails the practically total closure of the registration sheet, from which only the certification of registration in the said Index is excluded, and the same occurs in relation to the revocation of the NIF, in accordance with the provisions of DA6.4 of the LGT.

DGSJFP. Change of company name. Resolution of January 13th, 2022. [Full text.](#)

Decision on the appeal brought by the sole administrator of the company against the Registrar's refusal to register a deed of change of name. Initially, the Registrar found that the company name could not refer to an activity that was not included in its corporate purpose, nor could it be misleading or confusing in commercial transactions as to the company's own identity. However, the defect

was overturned, as it was considered that the company name did not lead to error or confusion in commercial transactions on the basis of the provisions of art. 406 of the Mercantile Register Regulations, and the company intended to include a misleading appellation in its company name, based on the corporate purpose set out in its articles of association; however, the DGS took into account that the freedom of choice of company name was not infringed. On that basis, the DGSJP upholds the appeal and revokes the contested classification.

DGSJFP. Cessation of sole proprietorship, change of name and capital increase. Resolution of January 24th, 2022. [Full text.](#)

Decision dismissing the appeal against the qualification note of the Commercial Registry for refusing the registration of a public deed containing the declaration of the cessation of a sole proprietorship, the change of company name, as well as a capital increase. In this way, the decision analyses whether, in the light of the situation, it was preferable for this agreement to enter - or not - in the Mercantile Register, given that this negative certificate of denomination had been issued in the name of a person other than the company. In this regard, the DGSJFP establishes that the answer can only be negative, so that said agreement cannot access the Companies Register in accordance with the provisions of art. 413.2 of the RRM. Furthermore, the DGSJFP points out that this certification must meet a series of requirements: it must be an original, be valid, and have been issued in the name of the founder or promoter, among others. On the basis of the foregoing, the DGSJFP agreed to dismiss the appeal and to confirm the registrar's note of qualification.

Remarkable Case Laws

Ruling of the Supreme Court of 25 January 2022. Right of separation due to non-distribution of dividends. [Full text.](#)

The Supreme Court analyses whether a shareholder has the right to withdraw from a limited company due to lack of distribution of dividends (ex art. 348 bis LSC). In this case, the defendant company held a first meeting in which it was agreed, with the dissenting vote of the plaintiff shareholder, not to distribute dividends. Faced with this situation, the dissenting shareholder informed the company of his intention to withdraw from the company when a second meeting had already been convened at which the distribution of dividends was intended. Firstly, the Chamber states that the purpose of the aforementioned article is not to protect the shareholder's right to withdraw from the company, but rather the right to the dividend, which in this case had been guaranteed to the shareholder by the resolution adopted at the second meeting (very close in time to the first) and which he himself rejected. Thus, the dissenting shareholder, having been able to obtain the distributable profit with only a short time margin, his action of refusing to receive the dividend and exercising his right of withdrawal showed that his real intention was not to receive the dividend, but to liquidate his shareholding and withdraw from the company. It therefore concludes that the exercise of the right of withdrawal was exercised abusively and contrary to the requirements of good faith.

Judgment of the Provincial Court of Valencia of 15 February 2022. Non-approval of the payment plan and provisional BEPI [Full Text.](#)

The Provincial Court of Valencia dismisses the appeal filed by the company in insolvency proceedings against the first instance decision granting the BEPI (Benefit of Exoneration of Unsatisfied Liabilities) provisionally, excluding

public credit rights, and refuses to approve the payment plan as it involves these credits. It is discussed whether Bankruptcy Law 22/2003 or TRLC 1/2020 is applicable, considering the date of application. In this context, the Court examined the possible excesses in the application of articles 491 and 497 of the TRLC, in relation to article 178 bis 3. 4 of the LC. The Court understands that the TRLC has replaced the LC, becoming inapplicable; not appreciating the existence of "ultra vires" in articles 491, 495, and 497 of the TRLC, not being able to apply the repealed article 178 bis of the LC. Furthermore, the TRLC is clear as to the extension of the BEPI and the content of the payment plan, in relation to public credits, which must be ruled by their own regulations and cannot be included in them. Thus, the Court confirms the decision at first instance.

Ruling of the Supreme Court of 15 February 2022. Data protection. [Full Text](#)

The Supreme Court confirms the sanction imposed by the Spanish Data Protection Agency on a company distributing telephone products as responsible for a serious infringement by allowing unauthorised access by third parties to financing applications containing personal customer data. The SC analyses whether breaches of the GDPR due to failures in security measures that may be committed by employees of a legal person must be examined in relation to the result, with the legal person on which the employee depends being imputed, irrespective of the precautionary measures adopted. In this regard, the SC states that it is not sufficient to design the necessary technical measures to guarantee the security of personal data, but it is also necessary that they are used appropriately. Thus, the company must be held responsible for the lack of diligence in their use, since it is proven that at the time the events occurred, there were measures in place that would have prevented the filtration of personal data that took place.

Summary of Interest: Resolution of the Penalty Proceeding 368/2021, dated February 17, 2022, of the Spanish Data Protection Agency, regarding the recording of meetings without the consent of the attendees.

The Spanish Data Protection Agency ("AEPD") has imposed a fine of 200,000 euros on a sports federation for having transferred to several media outlets part of the audios of a meeting held telematically in April 2020.

On that date, various sports representatives met to discuss the impact of the pandemic on sports. Subsequently, the federation issued a statement indicating that it had the recording of the meeting, stating that it had been recorded with the authorization of the attendees and without opposition from any of them. However, the attendees objected the mentioned statement, claiming that they did not authorize the recording of the meeting, and subsequently, several radio stations broadcasted the audio of the meeting.

The AEPD imposed the sanction for two reasons. Firstly, because the recording of the meeting by the federation was made without the express consent of the participants, and, secondly, because of its subsequent broadcasting to the media also without the prior consent of the participants.

It considers that the transfer of the personal data of the attendees to the media should have been preceded by the corresponding consent of those affected, as its established in Article 6.1.a) of the GDPR, which states that "*the processing of personal data shall be lawful if the data subject gave his consent to the processing of his personal data for one or more specified*

purposes". A situation that, in this case, did not occur.

It also refers to Article 5.1.b) of the GDPR, which states that personal data shall be processed solely and exclusively for: "*specified, explicit and legitimate purposes and shall not be further processed in a way incompatible with those purposes*". In this case, the personal data of those attending the meeting obtained by the federation through the recording, were later transferred to the media without being preceded by the corresponding consent of those affected.

On the other hand, it points out that the lack of opposition of those attending the meeting is not sufficient legitimizing cause according to the European Data Protection Regulation or the Organic Law on the Protection of Personal Data and Guarantee of Digital Rights, since consent must be according to art. 4 RGD: "*any free, specific, informed and unequivocal expression of will by which the data subject accepts, either by a statement or a clear affirmative action, the processing of personal data concerning him or her*".

Finally, it adds that, although the processing of the meeting data would be protected and legitimized by art. 6.1.c) of the RGD, being necessary for the fulfilment of a legal obligation such as the responsibility of these organisms to provide a solution in the field of sports to the situation caused by the conflict over Covid.19, not having been properly informed of the collection and dissemination, it would not be respecting art. 13 RGD, regarding the duty of information.

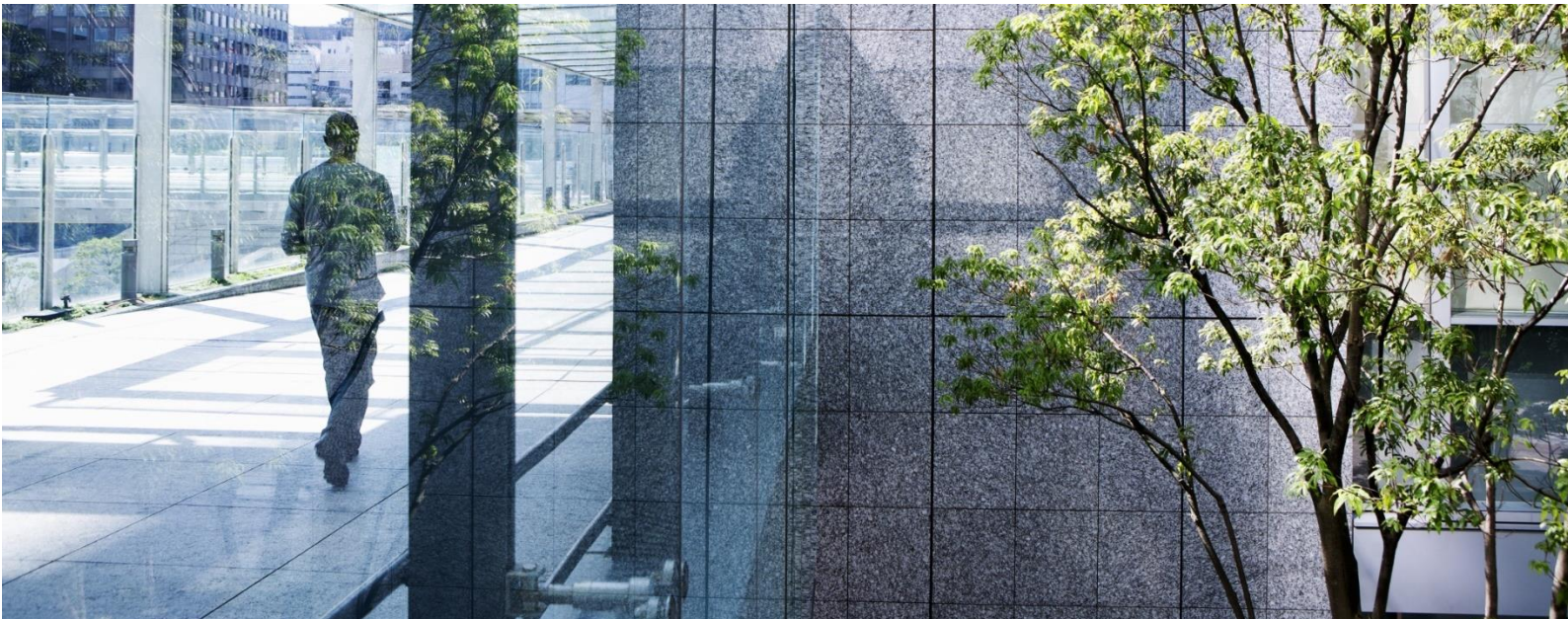
You can consult the full text in the [following link](#).

Contacts

Clementina Barreda, Partner, Mazars

Tel: 915 624 030

clementina.barreda@mazars.es



Newsletter coordinated and edited by Clementina Barreda and María Vicedo

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

mazars