



Corporate Law newsletter

Outstanding regulation developments

Administrative procedures. Resolution of 22 March 2022, of the General Direction of the National Social Security Institute, amending the one of 14 January 2022, which determines the benefits of the Social Security system whose resolution may be adopted in automated form, the distribution criteria for the assignment to the provincial directorates of the organisation and instruction of certain procedures, and the provincial directorate competent to recognise pensions when an international Social Security instrument is applicable. [Full text](#)

Administrative procedures. Computerised management. Order HFP/356/2022, of 20 April, which establishes the obligatory nature of communications and notifications by electronic means in the procedure for the concession by auction of State tobacco and stamp outlets. [Full text](#)

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mazars.taxlegal@mazars.es

Other outstanding regulation development

Urgent measures. Order PCM/258/2022, of 1 April, which publishes the Agreement of the Council of Ministers of 29 March 2022, by which urgent non-regulatory measures are adopted within the framework of the National Response Plan to the economic and social consequences of the war in Ukraine. [Full text](#)

Natural gas. Resolution of 24 March 2022, of the National Markets and Competition Commission of Spain, which establishes the detailed procedures for the development of congestion management and capacity anti-hoarding mechanisms in the natural gas system and modifies the Resolution of 3 April 2020, which establishes the detailed procedure for the development of market mechanisms for the allocation of capacity in the gas system, and the Resolution of 1 July 2020, which approves the methodology for the calculation of daily imbalance tariffs and the procedure for the settlement of imbalances of users and balancing and imbalance management actions of the technical system operator. [Full text](#)

Organisation. Royal Decree 241/2022, of 5th April, which modifies Royal Decree 453/2020, of 10th March, which develops the basic organisational structure of the Ministry of Justice, and modifies the Regulations of the State Legal Service, approved by Royal Decree 997/2003, of 25th July; Royal Decree 500/2020, of 28th April, which develops the basic organic structure of the Ministry for Ecological Transition and the Demographic Challenge, and modifies Royal Decree 139/2020, of 28th January, which establishes the basic organic structure of ministerial departments; and Royal Decree 372/2020, of 18th February, which develops the basic organic structure of the Ministry of Defence. [Full text](#)

Land Transport. Order PCM/282/2022, of 6 April, which modifies Order PRE/1435/2013, of 23 July, which develops the Regulations of the Law of Land Transport Organisation in matters of sanitary transport by road. [Full text](#)

Waste and contaminated soils. Law 7/2022, of 8 April, on waste and contaminated soils for a circular economy. [Full text](#)

Borders. Order INT/296/2022, of 8 April, modifying Order INT/657/2020, of 17 July, modifying the criteria for the application of a temporary restriction on non-essential travel from third countries to the European Union and associated Schengen countries for reasons of public order and public health due to the health crisis caused by COVID-19. [Full text](#)

Criminal Code. Organic Law 4/2022, of 12th April, which amends Organic Law 10/1995, of 23rd November. [Full text](#)

Spanish Agency for Medicines and Health Products. Statute. Royal Decree 271/2022, of 12 April, amending Royal Decree 1275/2011, of 16 September, which created the State Agency "Spanish Agency for Medicines and Health Products" and approved its Statute, to adapt its organisational structure to the provisions of Regulation (EU) 2017/745 of the European Parliament and of the Council, of 5 April 2017, on medical devices. [Full text](#)

Standardisation. Resolution of 4 April 2022, of the Directorate General for Industry and Small and Medium-Sized Enterprises, publishing the list of European standards that have been ratified during the month of March 2022 as Spanish standards. [Full text](#)

Sanitary measures. Royal Decree 286/2022, of 19 April, modifying the obligatory use of masks during the health crisis caused by COVID-19. [Full Text](#)

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resolution of 14 March 2022. Transfer of the registered office of a branch of a foreign company. [Full text](#)

An appeal was lodged against the registrar's refusal to register a transfer of registered office, justifying his decision on the grounds that the transfer of a foreign company, with a branch in Spain, is not possible because it is a secondary establishment with a certain degree of autonomy, but without its own legal personality and without its own shareholders, and therefore the decision-maker is the parent company. In this case, the person who acted as the permanent representative of the foreign branch issued the transfer certificate as if it had been issued by the board of the parent company. The Directorate General clarifies that a representative of a foreign branch is not competent to certify agreements, adding that the content of the document was ambiguous and did not prove that the shareholders endorsed such action. The appeal was dismissed and the decision of the commercial registrar was upheld on the basis of article 11 of the Capital Companies Act.

DGSJFP. Resolution of 28 March 2022. Appointment of directors by proportional representation system. [Full text](#)

An appeal was lodged against the refusal of the Vizcaya commercial registrar to register a deed of conversion to public deed of resolutions adopted by the General Meeting of a limited company, by virtue of which the articles of association were amended and a proportional representation system was introduced for the board of directors under the terms of art. 243 of the LSC. The registrar did not register the aforementioned amendment as he considered that this system is only provided for public limited companies, as stated in the aforementioned article. However, the

Directorate General revokes this classification, taking into account the Supreme Court ruling of 6 March 2009, by virtue of which the possibility of introducing the proportional representation system in limited liability companies by means of a provision in the articles of association was admitted. It therefore points out that there is no justification for rejecting a statutory provision such as the one in question in order to oblige shareholders to use other alternative remedies based on the possible inequality of voting rights between shareholders.

DGSJFP. Resolution of 4 April 2022. Numbering of shares redeemed in a capital reduction. [Full text](#)

The Directorate General resolves the appeal lodged against the qualification note of the commercial registrar of Vizcaya. According to this, the registration of a capital reduction due to the amortisation of shares was suspended because, according to the registry, part of the amortised shares did not correspond to the numbering adopted in the resolution. Faced with this ruling, the notary appealed against the decision, arguing that the vicissitudes that may affect the shares of a public limited company are outside the scope of the commercial register. Despite this, the Directorate General confirms the register's qualification note, as it considers that the number assigned to each of the shares fulfils the fundamental task of qualitatively identifying the shareholding position assigned to each shareholder, which is why this obligation is provided for in various articles of the commercial regulations. For all these reasons, it concludes that the registration of the articles of association is the complement which, together with the share, delimits the position of the shareholder and provides information on its survival.

Remarkable Case Laws.

Judgment of the Supreme Court of April 7, 2022. Validity and efficiency of shareholders' agreements. [Full Text](#)

The Supreme Court has ruled on the controversy that has arisen over the effectiveness of shareholders' agreements (extra-statutory agreements) entered into by all the partners of the company against the company, which is not a party to the agreement. The appellant argues that there is conflicting case law on the effectiveness of the covenants, stating and affirming that the covenants are enforceable against the company. The Supreme Court, supporting the argument of the Provincial Court in the second instance, affirms that the shareholders' agreements produce effects only for the signatories, alluding to the principle of relativity of contracts in art. 1257 CC and that, therefore, they cannot directly affect the company, as it was not a signatory to the agreement. For all these reasons, the appeal is rejected, confirming that the agreements are only binding on those who sign them.

Judgment of the Court of Justice of the European Union of April 7, 2022. Information obligations in electronic contracting. [Full Text](#)

The Court of Justice of the European Union on the controversy arising between a consumer and an accommodation booking platform. The consumer reserved a series of rooms for specific dates in a hotel registered on the platform. When the date arrived, the consumer did not turn up at the hotel, and his account was debited with a cancellation charge. The German national court referred the question to the CJEU as to whether the expression 'finalise the booking' corresponds to 'order with obligation to pay'. The CJEU considers that a balance must be struck between consumer protection, the competitiveness of businesses and the freedom of the entrepreneur. Article 8.2.2.2 of

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, and taking into account that it is part of a distance contractual situation, must be interpreted if information on the form for cancellation is given correctly and understandably in the language expressed. Therefore, it is emphasised that the national court must check whether, in the official language and in the everyday language of the average, informed and reasonably attentive consumer, the term "reservation" is associated with the creation of a payment obligation.

Judgment of the Court of Justice of the European Union of 31 March 2022. Exception to consumers' right of withdrawal. [Full Text](#)

The The Court of Justice of the European Union rules on a preliminary ruling on the exception to the right of withdrawal when the contractual relationship is not direct but involves intermediaries. In the question, a third party sells tickets for an event organised by a company. In this respect, the sale of a right and not of a good is considered to be involved, so that the trader's performance constitutes a provision of services. Article 16(l) of Directive 2011/83 covers services provided in the entertainment sector, without being limited exclusively to that activity, with the result that the intermediary's activity falls within the scope of the provision. The Court considers that the exception to the right of withdrawal must be interpreted in such a way as to be enforceable for as long as the contract is concluded with an intermediary, provided that the termination of the contract by withdrawal places the risk arising from the reservation of seats on the organiser of the activity and that the activity is to take place on a specific date or during a specific period.

Review of Interest:

Draft Bill to reform the Consolidated Text of the Insolvency Act: Pre-insolvency Law.

[Full text](#)

The Council of Ministers approved on 21 December 2021 the Draft Bill for the reform of the Insolvency Act, being published in the Official Gazette on 14 January 2022, thus initiating its parliamentary processing. [The reform is intended to transpose Directive \(EU\) 2019/1023 of the Parliament and of the Council of 20 June 2019.](#)

The bill was processed under the urgency procedure, with a deadline for amendments until 9 February 2022. A total of 600 amendments were tabled during this period, some of them relating to the elimination of barriers to access to the Second Chance, the extension of the amount of public credit exemption, the reduction of the scope of the special procedure for SMEs, etc.

Analysing the most important changes of the reform, four blocks are structured. The first of these [refers to restructuring plans, which replace the current refinancing agreements and](#) make it easier for debtor companies to have effective instruments at their disposal to avoid insolvency or emerge from insolvency. Compared to the previous arrangements, there were two types of plans, now reduced to one, but maintaining the principle of a majority decision by creditors and minimal judicial intervention, inspired by the criteria of necessity and proportionality. [The new plans allow approval without most certain groups of affected creditors,](#) with the debtor establishing the perimeter of the debt to be restructured and favouring the imposition of certain plans against the debtor's will.

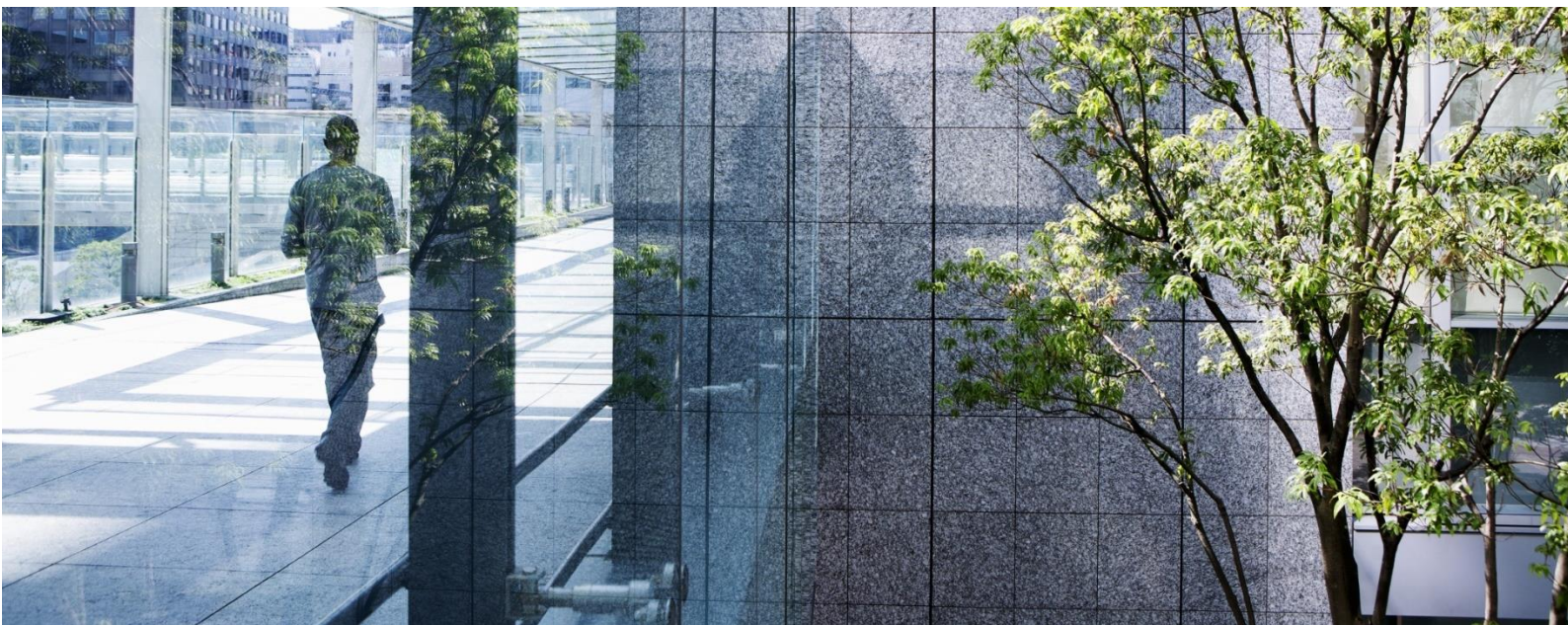
The second block deals with insolvency proceedings and their effectiveness, making the current rules more appropriate, effective, and flexible. [These new rules relate to the application for insolvency proceedings with the submission of an offer to acquire one or more production units,](#) the reduction of deadlines for declaring voluntary insolvency proceedings and the processing of the application for a declaration of insolvency proceedings.

The third block deals with the insolvency procedure for microenterprises, [introducing a special insolvency procedure for microenterprises](#) to consider their characteristics and vulnerability. [It is a single regime, which combines the aspects of bankruptcy and restructuring plans mentioned above, by means of abbreviated, simple, rapid, and flexible procedures.](#) Its purpose is mainly to reduce procedural costs, eliminating unnecessary formalities for microenterprises and limiting the participation of professionals and institutions to what is essential.

Finally, the fourth block [is the reorganisation of the functions of the commercial courts.](#) The new regulation assigns insolvency proceedings against individuals to the commercial courts, which entails a modification of the Organic Law of the Judiciary. [Insolvency administration is no longer compulsory, and the system established will be agreed between the debtor and the creditors.](#) The draft also allows for the appointment of professionals specialised in restructuring; assistants who would be appointed even before the bankruptcy is formally declared.

Contacts

Clementina Barreda, Partner, Mazars
Tel: 915 624 030
clementina.barreda@mazars.es



Newsletter coordinated and edited by Clementina Barreda and María Vicedo

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