



Corporate Law Newsletter

Outstanding regulation developments

Insolvency Law. Law 16/2022, of September 5, amending the consolidated text of the Insolvency Law, approved by Royal Legislative Decree 1/2020, of May 5, for the transposition of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on frameworks for preventive restructuring, debt waivers and disqualifications, and on measures to increase the efficiency of restructuring, insolvency and debt waiver proceedings, and amending Directive (EU) 2017/1132 of the European Parliament and of the Council on certain aspects of company law (Restructuring and Insolvency Directive). [Full text.](#)

Companies. Law 18/2022, of September 28, on the creation and growth of companies. [Full text.](#)

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

Urgent measures. Royal Decree-Law 16/2022, of September 6, for the improvement of working conditions and social security for domestic workers. [Full text.](#)

Free legal assistance. Regulations. Real Decree 586/2022, of July 19, amending the Regulation on free legal aid, approved by Royal Decree 141/2021, of March 9. [Full text.](#)

Urgent measures. Royal Decree-Law 17/2022, of September 20, which adopts urgent measures in the field of energy, in the application of the remuneration system to cogeneration facilities and temporarily reduces the Value Added Tax rate applicable to deliveries, imports and intra-Community acquisitions of certain fuels. [Full text.](#)

Urgent measures. Royal Decree-Law 16/2022, of September 6, for the improvement of working conditions and social security for domestic workers. [Full text.](#)

Minimum living income. Royal Decree 789/2022, of September 27, which regulates the compatibility of the Minimum Vital Income with income from work or self-employment in order to improve the real opportunities for social and labor inclusion of the beneficiaries of the benefit. [Full text.](#)

Electrical System. Resolution of September 8, 2022, of the National Commission for Markets and Competition, approving the conditions applicable to non-frequency services and other services for the operation of the Spanish peninsular electricity system. [Full text.](#)

Ministry of the Presidency. Royal Decree 729/2022, of September 6, amending Royal Decree 640/2007, of May 18, 2007, which establishes exceptions to the mandatory nature of the rules on driving and rest times and the use of the tachograph in road transport. [Full text.](#)

Head of State. Organic Law 11/2022, of September 13, amending the Penal Code regarding imprudence in the driving of motor vehicles or mopeds. [Full text.](#)

Ministry of Social Rights and Agenda 2030. Royal Decree 767/2022, of September 20, regulating the direct granting of a subsidy to the Autonomous Community of the Canary Islands and the cities of Ceuta and Melilla for the care and reception of unaccompanied migrant children and adolescents in the year 2022. [Full text.](#)

European Union. Commission Implementing Regulation (EU) 2022/1504 of 6 April 2022 laying down detailed rules for the implementation of Council Regulation (EU) No 904/2010 as regards the establishment of an electronic central payment information system (CESOP) to combat VAT fraud. [Full text.](#)

Science, technology and innovation. Law 17/2022, of September 5, amending Law 14/2011, of June 1, on Science, Technology and Innovation. [Full text.](#)

Remarkable Case Laws

Judgment of the Court of Justice of the European Union, Grand Chamber, of September 20, 2022. Insider trading. [Full text.](#)

The CJEU resolves a question referred for a preliminary ruling in the context of two criminal proceedings for insider trading offences, concerning the conciliation of Directive 2002/58/EC on privacy and electronic communications, as well as Directive 2003/6/EC on market abuse and Regulation (EU) No 596/2014 on market abuse with French national rules. Specifically, the court of cassation asks, in the light of Articles 7, 8, 11 and 52(1) of the Charter of Fundamental Rights of the European Union the question whether the generalised and undifferentiated retention of electronic traffic data for one year by operators of electronic communications services is compatible with Article 15(1) of the Privacy Directive; with Article 12(2)(a) and (d) of the Market Abuse Directive; and with Article 23(2)(g) and (h) of the Market Abuse Regulation. The CJEU declared that such data retention is incompatible with European law. Likewise, the CJEU recalled that the admissibility of evidence obtained through such data retention is governed by national law, provided that the principles of equivalence and effectiveness are respected, which was not the case in this instance.

Judgment of the General Court of the European Union (Fifth Chamber) of 14 September 2022. Possibility of registering slogan trademarks. [Full text.](#)

The General Court of the European Union confirms the EUIPO's criterion by concluding that the registration of slogan trademarks is only possible if, beyond the mere promotional formula, there is distinctive character. This decision is based on two applications from 2020 for the registration of European trademarks for food products and catering services before the EUIPO, which were

rejected at first instance (and subsequently on appeal) on the grounds that the EUIPO considered that the trademarks only conveyed a promotional message (that the food was ready to eat or serve, that it was quick to prepare or that it was packaged in such a way as to allow immediate consumption) and as such, lacked distinctiveness.

Judgment of the Supreme Court, Civil Division, of September 14, 2022. Insolvency proceedings. Standing. [Full text.](#)

The Supreme Court has ruled on the debtor's standing in the context of an insolvency proceeding. In this respect, it declares that the debtor in bankruptcy whose patrimonial powers are suspended does not have the legal standing to file claims with non-personal actions, not even in the case of having the authorisation of the bankruptcy administration. In this case, a company had a contingent credit recognised in its favour in the insolvency proceedings of another company and decided to file a claim opposing the judicial approval of the arrangement. However, before the claim was admitted for processing, the plaintiff was declared bankrupt and its assets were suspended. In view of this, both the Mercantile Court and the Provincial Court rejected the claim and approved the agreement on the basis that the plaintiff lacked capacity and standing to challenge it. Finally, after an appeal in cassation, the Supreme Court upheld the previous instances, ruling that, in this case, in which the claim filed in opposition to the agreement is an action of a non-personal nature, the law itself restricts standing to the insolvency administration.

Therefore, in the case of suspension of patrimonial powers, the only person with legal standing to bring the action will be the insolvency administrator.

Summary of Interest: Law 18/2022, of 28 September, on the creation and growth of companies.

On 29 September, Law 18/2022, of 28 September, on the creation and growth of companies, was published in the Official State Bulletin (BOE), which aims, among other things, to streamline procedures by minimising the requirements necessary for the creation, start-up, and development of companies.

This new law brings important changes to current legislation on companies modifying some texts such as [Royal Legislative Decree 1/2010, of 2 July, which approves the revised text of the Capital Companies Act \(hereinafter, "LSC"\)](#) (Articles 4, 4 bis, 5, 23, 434 to 454 and add. provision eight); [Law 14/2013, of 27 September, on support for entrepreneurs and their internationalisation](#) (Articles 8 to 10, 13 to 16 and 22); or [Law 56/2007, of 28 December, on measures to promote the information society](#) (art. 2 bis).

In particular, Article 2 of the new law, which amends Article 4 LSC, sets the minimum capital of the limited liability company at the symbolic amount of 1 euro and introduces rules to safeguard the interest of creditors. [As long as the share capital remains below 3,000 euros, the following rules apply](#) (i) 20% of the profit must be allocated to the legal reserve until this reserve together with the share capital reaches 3,000 euros, and (ii) if on liquidation of the company there are insufficient assets to pay the company's obligations, the shareholders will be jointly and severally liable for the difference between the figure of 3,000 euros and the subscribed capital.

[In addition, the system of successive formation previously provided for in the LSC is abolished, as it no longer makes sense in view of the new minimum share capital requirement.](#) Thus, limited liability companies that are subject to the successive formation regime [may amend their articles of association to be governed by the new specific rules for companies with a share capital of less than three thousand euros.](#)

Likewise, the provisions relating to the new limited company (Articles 434 to 454 and Additional Provisions fourth to sixth) are also repealed. This speciality of limited company thus disappears, although it is specified in the transitional provisions that the legal framework for limited liability companies [will apply to this type of company existing at the entry into force of this reform.](#)

Other new developments in corporate matters include the possibility of registering civil companies with a commercial purpose in the Commercial Register and the recognition of benefit and common interest companies.

Articles 3 and 4 introduce new rules on notarial obligations in the company formation process, laying down duties of information and other obligations on notaries and intermediaries advising and participating in the formation of companies. [It establishes the obligation of notaries to provide information on the advantages of using the Entrepreneur Service Points \(PAE\) and the Business Creation Network \(CIRCE\),](#) as well as on other procedures related to the start-up of the activity, such as the use of the Single Electronic Document (DUE). All of this with the aim of facilitating and promoting the incorporation of companies through the use of the telematic processing system.

Article 12 amends [Law 56/2007](#) with regard to electronic invoicing in the private sector, extending the obligation to issue and send electronic invoices to all entrepreneurs and professionals in their commercial relations (art. 2 bis).

On the other hand, with regard to electronic invoicing in the private sector, Article 12 amends [Law 56/2007](#), establishing that [all entrepreneurs and professionals must issue, and receive electronic invoices in their business dealings with other entrepreneurs and professionals.](#) For entrepreneurs and professionals whose annual turnover [exceeds eight million euros, this obligation will come into force one year after the regulatory development has been approved;](#) and for all other entrepreneurs and professionals, it will come into force two years after

the regulatory development has been approved. These measures will make it possible to obtain reliable and agile information on effective payment periods, an essential requirement for reducing commercial delinquency.

Although all commercial companies are still obliged to expressly include their average supplier payment period in the notes to their annual accounts, [the obligation to disclose this information is significantly intensified for listed companies and for unlisted companies that do not present abridged annual accounts](#). In these cases, in addition to the aforementioned obligations, they are required to include in the notes to the annual accounts the monetary volume and number of invoices paid in a period lower than the maximum established in the regulations on late payment, as well as the percentage it represents of the total number of invoices and total payments to suppliers.

In addition, an amendment is made to Law 3/1991, of 10 January 1991, on Unfair Competition, by virtue of which a new paragraph 4 is introduced into Article 15 establishing that [repeated non-compliance with the rules on combating late payment in commercial transactions will be considered an unfair act](#).

With regard to participatory financing, measures [are introduced to boost alternative financing instruments such as crowdfunding, collective investment and venture capital](#). Thus, in the area of crowdfunding, [the Law provides greater flexibility to these platforms, which are responsible for putting investors in contact with natural or legal persons requesting funding](#) for a project, and allows the provision of their services in Europe, as well as the creation of vehicles to bring together these investors.

With regard to venture capital, [this sector is also boosted by extending the type of companies in which these entities can invest, including financial companies with a high technological component, and by allowing closed-end collective investment](#) undertaking management companies to be incorporated as limited liability companies.

The provisions contained in this new law will enter [into force on 19 October 2022](#), twenty days after its publication in the Official State Gazette, [with the exception of Chapter V](#), relating to the legal regime of crowdfunding platforms (Articles 14 and 15) [and Article 12](#), relating to electronic invoicing between entrepreneurs and professionals, which entered into force on 10 November 2022, with the special features previously mentioned.

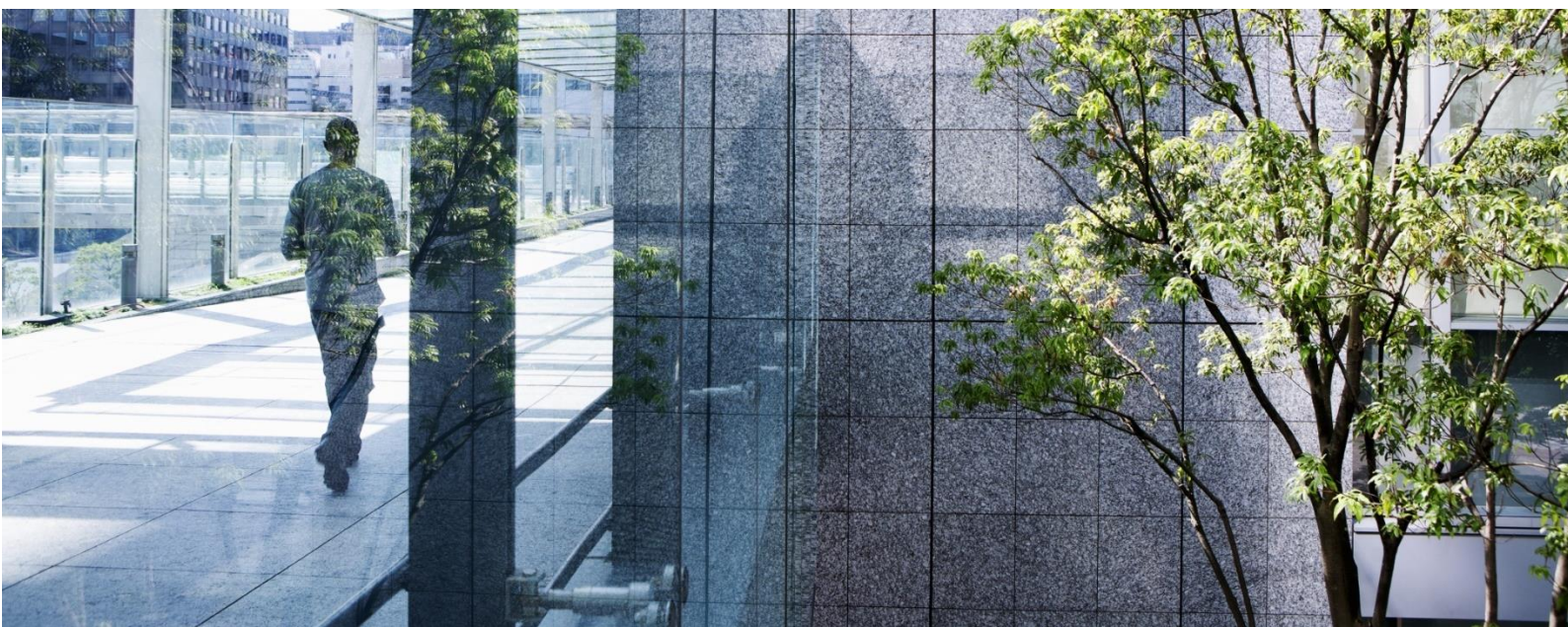
Full text is available at the [following link](#).

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