



Corporate Law newsletter

Outstanding regulation developments

Transposition of EU Directives. Law 11/2023, of 8 May, on the transposition of European Union Directives on the accessibility of certain products and services, migration of highly qualified persons, taxation and digitalisation of notarial and registry proceedings; and amending Law 12/2011, of 27 May, on civil liability for nuclear damage or damage caused by radioactive materials. [Full text](#).

Budgets. Law 12/2023, of 24 May, on the right to housing. [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:

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Other outstanding regulation development

Community designs. Opinion of 22 March 2023. Issued by the European Economic and Social Committee on the Proposal for a Regulation amending Regulation (EC) 6/2002 on Community designs and on the Proposal for a Directive on the legal protection of designs. [Full text.](#)

Electricity market. Resolution of 20 April 2023, of the Comisión Nacional de los Mercados y la Competencia, on modification of the parameters of the Resolution by which the unique nature of the electricity interconnection between Spain and France through the Bay of Biscay is granted and included in the remuneration system for unique investments with special technical characteristics. [Full Text.](#)

Transport of goods. Royal Decree 332/2023, of 3 May, which regulates compensation for maritime and air transport of goods with origin or destination in Ceuta and Melilla. [Full Text.](#)

Sports limited companies. Resolution of 8 May 2023, of the Presidency of the Consejo Superior de Deportes, which publishes the figure referred to in article 3.2. a) of Royal Decree 1251/1999, on Public Limited Sports Companies, for professional competition in men's football. [Full text.](#)

Independent Office for the Regulation and Supervision of Contracting. Royal Decree 342/2023, of 9 May, which approves the rules for the organisation and operation of the Independent Office for the Regulation and Supervision of Contracting. [Full text.](#)

Emission of gases. Resolution of 11 May 2023, of the Secretary of State for Energy, which determines the national average values of the intensity of greenhouse gas emissions during the life cycle in relation to the electricity consumed by motorbikes and electric vehicles. [Full text.](#)

Measures against drought. Royal Decree-Law 4/2023, of 11 May, adopting urgent measures in agricultural and water matters in response to the drought and the worsening of conditions in the primary sector deriving from the war in Ukraine and weather conditions, as well as the promotion of the use of collective public land transport by young people and the prevention of occupational hazards in episodes of high temperatures. [Full text.](#)

Retirement. Royal Decree 371/2023, of 16 May, which develops the legal regime of the economic supplement established in article 210.2 of the revised text of the General Law on Social Security, approved by Royal Legislative Decree 8/2015, of 30 October. [Full text.](#)

Food chain. Royal Decree 368/2023, of 16 May, modifying the Statute of the Food Information and Control Agency, O.A., approved by Royal Decree 227/2014, of 4 April; and Royal Decree 66/2015, of 6 February, which regulates the system of controls to be applied by the Food Information and Control Agency, foreseen by Royal Decree 227/2014, of 4 April, and Royal Decree 66/2015, of 6 February, which regulates the system of controls to be applied by the Food Information and Control Agency.

Food Information and Control Agency, provided for in Law 12/2013, of 2 August, on measures to improve the functioning of the food chain. Full text.

Taxation, Administrative cooperation (DAC 7). Law 13/2023, of 24 May, which amends Law 58/2003, of 17 December, on General Taxation, in transposition of Council Directive (EU) 2021/514 of 22 March 2021, amending Directive 2011/16/EU on administrative cooperation in the field of taxation, and other tax regulations. Full text.

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resolution of 27 April 2023. Joint proxies. [Full text.](#)

The DGSJFP upholds the appeal lodged against the suspension of the registration of a power of attorney granted by two joint attorneys-in-fact of an S.L. In the aforementioned deed, the attorneys-in-fact conferred power of attorney in favour of a third person so that, in the name and on behalf of the company, he could make partial use of the powers that they themselves had conferred jointly, providing that some of them could be exercised jointly and severally. The Commercial Registrar suspended the requested registration as he considered that those powers could only be exercised jointly and could not therefore be delegated to be exercised jointly and severally. However, the DGSJFP concludes that since the attorneys-in-fact had sufficient powers to substitute the power of attorney, certain powers could be exercised by another attorney-in-fact individually. This is because the form of exercise of their powers of attorney, in this case joint powers of attorney, only conditions the validity of the declarations of intent that they issue in the exercise of that power of attorney, which must be consensual, but does not restrict the type of power of attorney that they grant as a substitution. Accordingly, the DGSJFP upheld the appeal and revoked the contested classification.

DGSJFP. Resolution of 8 May 2023. Appointment of sole administrator. Failure to file annual accounts. [Full text.](#)

The DGSJFP resolves the appeal lodged by the sole director of an S.A. against the negative classification issued by the Mercantile Registrar in which the registration of a deed of the appointment of the sole director of the company was refused, because the company's registration page was closed due to the lack of deposit of the annual accounts. The DGSJFP points out that this closure of the register constitutes a sanction against the company for failure to comply with the legal obligation to deposit its annual accounts, which, although not

The DGSJFP points out that the closure of the register constitutes a sanction against the company for failure to comply with the legal obligation to file its annual accounts, which, although not applicable in relation to certain registrations (listed in Article 282.2 LSC, such as the dismissal or resignation of directors, the dissolution of the company and appointment of liquidators, the revocation or resignation of powers of attorney, among others), does not include the appointment of directors. Likewise, the DGSJFP points out that the registration closure can be lifted in the cases and under the conditions specified in Article 378 of the RRM, none of which were invoked in this case. On the basis of the foregoing, the DGSJFP dismisses the appeal and confirms the contested classification note.

DGSJFP. Resolution of 11 May 2023. Appointment of auditors. [Full text.](#)

The DGSJFP resolves the appeal filed by the sole director of an S.A. against the negative classification issued by the Mercantile Registrar in which the registration of the revocation of the appointment of the auditor of the company's accounts was refused because the corresponding agreement did not state the just cause on which the decision was based. The company director appealed against this decision, arguing that it was the auditor who should have made the appropriate communication expressing this circumstance to the ICAC and the corresponding RM and not the company when adopting the resolution. However, the DGSJFP points out that the competence corresponds to the general meeting of the company and it is also the company itself that must certify the resolution adopted by means of the appropriate certification, as well as, where appropriate, proceed to make it public. On this basis, the DGSJFP dismisses the appeal and confirms the contested rating note, arguing that it is in the company's resolution to revoke the appointment of the auditor that the reasons justifying the dismissal must be identified.

Remarkable Case Laws.

Judgment of the Supreme Court of 11 April 2023. Challenge of corporate resolutions.

[Full Text](#)

The Supreme Court dismisses the appeal in cassation brought by a shareholder of a company, in the exercise of an action to challenge corporate resolutions. In this case, the defendant company held an ordinary general meeting at which resolutions were adopted relating to the approval of the annual accounts of the company. The plaintiff shareholder, who represented 36.75% of the share capital, voted against. He filed a lawsuit challenging the resolutions adopted by the company, arguing that the actions resulting in the movements of assets reflected in the annual accounts were detrimental to the company's interests and that the approval of the accounts would have the effect of validating them. In this respect, the High Court concludes that the approval of the annual accounts does not fulfil a function of "validation" of the transactions reflected therein, so that the resolution approving them in accordance with the legal criteria cannot be considered harmful to the corporate interest. In short, it concludes that the fact that the movements of assets that may be considered detrimental to the company's interests are reflected in the annual accounts does not make the resolution approving those accounts detrimental, which is why the Supreme Court dismisses the appeal.

Judgment of the Supreme Court of 21 April 2023. Joint and several liability for corporate debts. [Full Text](#)

The Supreme Court upholds the appeal lodged by a creditor of the defendant company, requesting joint and several liability for company debts of the administrators of the legal person managing the debtor company (art. 367 LSC). debts of the administrators of the legal person administering the debtor company (art. 367 LSC).

The ruling analyses the possible joint and several liability for the debts of the administrators of one company administering another, when both the administered company and the administrator are in legal grounds for dissolution and no meeting has been called within a period of two months. In this respect, the Supreme Court affirms that the administrators will be jointly and severally liable when, in the event that the company is in legal grounds for dissolution due to losses, the dissolution was not called within the deadline. For all the foregoing reasons, the Supreme Court annuls the previous rulings and upholds the appeal lodged.

Judgment of the High Court of Justice of the European Union of 17 May 2023. Right of withdrawal. [Full Text](#)

The CJEU rules on a question referred for a preliminary ruling in relation to the interpretation of article 14.5 of Directive 2011/83/EU on consumer rights. The question concerns a contract for electrical installation renovation services in the consumer's home, in which the company did not inform the consumer of the 14-day right of withdrawal. Subsequently, after executing the contract, the company sent the consumer the invoice for the services provided and the consumer withdrew from the contract. In this regard, the CJEU states that, in off-premises contracts, where the trader has not informed the consumer of his right of withdrawal, he must bear the costs incurred by him in performing the service contract before the end of the withdrawal period, without the consumer incurring any costs for the service provided.

Review of Interest: Law 11/2023, of 8 May, on the digitisation of notarial and registry proceedings ("Law 11/2023")

On 9 May, Law 11/2023, of 8 May, on the transposition of European Union Directives on the accessibility of certain products and services, migration of highly qualified persons, taxation and digitalisation of notarial and registry proceedings, and amending Law 12/2011, of 27 May, on civil liability for nuclear damage or damage caused by radioactive materials (hereinafter, "Law 11/2023"), was published in the Official State Gazette (BOE). One of the main objectives of this regulation is to enable telematic notarial and registry intervention with the aim of facilitating the provision of notarial and registry services without physical presence. Likewise, this regulation allows the telematic execution of incorporation processes, capital increases and other operations for limited liability companies, including certain requirements such as the need for the contributions to be made at the time of incorporation to be in cash.

To this end, the new regulation amends, among other laws, various articles of the Notaries Act, the Commercial Code and the Consolidated Text of the Capital Companies Act (hereinafter, "LSC").

In the [corporate sphere](#), the most relevant amendments are those relating to Article 22 bis, which includes the possibility of carrying out the incorporation process electronically for limited liability companies, as well as the performance of other notarial acts and registrable operations subsequent to incorporation, which can also be carried out electronically.

In this respect, it is important to note that the company can only be incorporated electronically when the shareholders' contribution to the share capital is made in cash. Also noteworthy are the amendments introduced regarding the deadlines for registration in the corresponding Companies Register. In this respect, companies using a standard form of articles of association [will have a registration period of six working hours from the day following the date of the entry](#). The notary may exceptionally require a physical appearance, provided that this is based on reasons of public interest. Finally, it is also worth mentioning the introduction of the third section of Art. 213 LSC, [which deals with disqualification from being a director of a Spanish company](#). The novelty of this provision lies in the fact that any disqualification in force in another EU member state will be taken into account with regard to disqualification from being a director of a Spanish company.

Other innovations introduced by Law 11/2023 in [relation to the handling of notarial and registry acts without physical presence](#) are also noteworthy. Such as the amendments to the Commercial Code that oblige the corresponding Commercial Register to operate with the European central platform in all those regulations that are determined, which will come into force one year after the publication of Law 11/2023, i.e. on 9 May 2024.

Likewise, in relation to the Notaries Act, the possibility of executing certain instruments via videoconference and electronic appearance is included. These amendments will enter into force on 9 November 2023, i.e. six months after the publication of Law 11/2023 in the Official State Gazette.

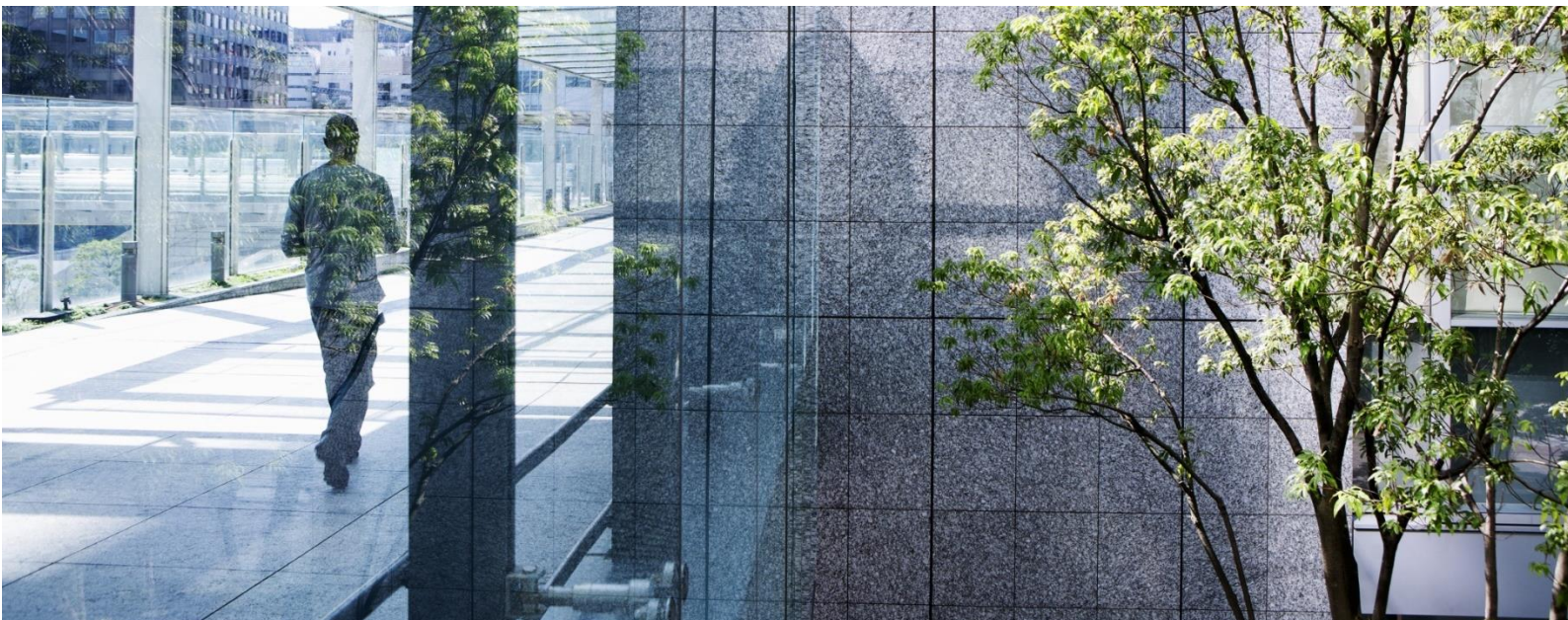
You can consult the full text at the [following link](#).

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