



Corporate Law newsletter

Outstanding regulation developments

Artificial Intelligence. Royal Decree 729/2023, of 22nd August, approving the Statute of the Spanish Artificial Intelligence Supervisory Agency. [Full text.](#)

Insurance and Pension Funds. Circular 1/2023, of 30 August, of the Directorate General of Insurance and Pension Funds, regarding the obligatory use of electronic media for the practice of communications and notifications with insurance intermediaries, reinsurance brokers and certain complementary insurance intermediaries. [Full text.](#)

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Other outstanding regulation development

Electricity market. Commission Delegated Regulation (EU) 2023/2104 of 4 July 2023 amending Delegated Regulation (EU) 2015/2402 as regards the revision of the harmonised efficiency reference values for separate production of heat and electricity, in accordance with Directive 2012/27/EU of the European Parliament and of the Council. [Full text.](#)

Air navigation. Commission Delegated Regulation (EU) 2023/1768 of 14 July 2023 laying down detailed rules for the certification and declaration of air traffic management systems and air navigation services and of air traffic management and air navigation services constituents. [Full text.](#)

European Central Bank. Decision (EU) 2023/1680 of the European Central Bank of 17 August 2023 on the submission by national competent authorities to the European Central Bank of the funding plans of supervised institutions (ECB/2023/19) [Full text.](#)

Inheritance and Gift Tax. Decree-Law 5/2023, of 4 September, modifying the reductions in the tax liability for Inheritance and Gift Tax. [Full Text.](#)

Debt operations and derivatives. Resolution of 8 September 2023, of the General Secretariat of the Treasury and International Finance, updating Annex 1 included in the Resolution of 4 July 2017, of the General Secretariat of the Treasury and International Finance.

Financial, defining the principle of financial prudence applicable to the debt and derivative operations of autonomous communities and local entities. [Full text.](#)

Accounting. Commission Regulation (EU) 2023/1803 of 13 September 2023 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council. [Full text.](#)

Official Credit Institute. Resolution of 18 September 2023, of the Official Credit Institute, publishing the Agreement with the Association of Registrars of Property, Mercantile and Movable Property of Spain, to cooperate within the framework of the Recovery, Transformation and Resilience Plan. [Full text.](#)

Congress of Deputies. Reform of the Rules of Procedure of the Congress of Deputies, of 25 September 2023. [Full text.](#)

Gas system. Order TED/1072/2023, of 26 September, which establishes the charges of the gas system and the remuneration and fees for basic underground storage facilities for the gas year 2024. [Full text.](#)

Financial assets. Resolution of 26 September 2023, of the General Secretariat of the Treasury and International Finance, which publishes the effective annual interest rate for the fourth calendar quarter of the year 2023, for the purpose of tax classification of certain financial assets. [Full text.](#)

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resolution of 26 July 2023. Denial of a reservation of denomination. [Full text.](#)

The DGSJFP upheld the appeal brought against the negative classification issued by the Commercial Registrar in relation to a refusal of a reservation of a name. The Registrar justified his decision on the basis of the existence of two names similar to the one applied for on the ground that they were phonetically identical. The DGSJFP, for its part, argues that, although our system prohibits identity between names, it does not, however, prohibit similarity, and therefore considers that, although there is a certain phonetic identity between the names, it grants the new name because it is unique and differentiated.

DGSJFP. Resolution of 24 July 2023. Importance of the N.I.F. of Non-Residents. [Full text.](#)

The DGSJFP upheld the appeal lodged against the negative classification by the Commercial Registrar refusing to register the sale and purchase of a hot air balloon on the grounds that the tax identification number (N.I.F.) of the selling party was not on record. Before a notary in the Czech Republic, the parties notarised a sale and purchase agreement, the object of which was the sale by a foreign company of a hot-air balloon to a Spanish resident. The Registrar suspended the registration on the grounds that the seller's tax identification number was missing and the Spanish buyer appealed against the defect.

After carrying out the appropriate analysis, the DGSJFP concluded that although the inclusion of the tax identification number in contracts subject to registration is of great importance, in this case it would not be necessary for it to be included, in accordance with the provisions of article 254 of the Mortgage Law, as the seller is not a taxpayer. Therefore, it revokes the qualification note and upholds the appeal lodged.

DGSJFP. Resolution of 24 July 2023. Reduction of capital by amortisation of shares. [Full text.](#)

The DGSJFP upheld the appeal brought against the refusal of the Commercial Registrar to register a reduction of share capital. In this case, the general meeting of the company in question resolved to reduce the share capital with the redemption of shares following the purchase of those shares, setting up a restricted reserve for an amount equivalent to the sum of the nominal value of the shares redeemed. The Commercial Registrar refused registration on the ground that the restricted reserve had to be constituted for an amount equal to the amount received by the shareholder as restitution. However, the DGSJFP argues that it is sufficient for the restricted reserve to be set up for an amount equal to the sum of the nominal value of the redeemed shares, as this guarantees creditors the same liability as existed prior to the reduction.

Remarkable Case Law

Judgment of the Supreme Court of 8 September 2023. Lack of contractual nature of a document . [Full text](#) .

The Supreme Court dismisses the appeal and confirms the judgment of the Court of First Instance in a case in which an English company sued a Spanish company claiming liability for damages arising from an alleged breach of Terms and Conditions. At first instance, the case was considered subject to Spanish law, not giving as valid a clause of submission to English law that was included in those terms. At second instance it was concluded that the eligibility of English law is only effective to the extent that it is validly adopted by the parties. Along these lines, the Chamber considers that the disputed document is not a binding contract, but a contractual offer which was not perfected as such between the parties. As a result, the plaintiff's claims are deprived of the legal basis on which it sought to rely, dismissing the appeal and upholding the judgment of first instance.

Decision of the EUIPO of 1 June 2023. Refusal of registration of an emoji. [Full text](#)

On 1 June 2023, the *Board of Appeal of the European Union Intellectual Property Office* (hereinafter "EUIPO") dismissed an appeal seeking the registration as a trademark of an emoticon from the American sign language meaning "I love you". The EUIPO considered that the emoticon was devoid of distinctive character to become a trade mark, since, according to the law distinctiveness is characterised by, inter alia, the perception of such a mark by the relevant public. In this situation EUIPO considered that the relevant public would identify the sign as an *emoji* with a

purely decorative or commercial character and not as a trademark. In line with the above, EUIPO argued that, for a sign to have distinctive character, it must also identify the goods or services and attribute a particular business origin to them, which was not met in this case either. On the basis of the above, the *Board of Appeal* dismissed the appeal and refused registration of the mark.

Judgment of the Madrid Provincial Court of 12 May 2023. Capital increase and pre-emptive right of assumption. [Full text](#).

The Madrid Provincial Court upheld the first instance judgment and annulled the agreement to increase the capital of a limited liability company. The company divided its share capital into class A and B shares. At the general meeting, a capital increase was agreed by means of the creation of class A shares with a charge to cash contributions, recognising the right of preferential assumption only to the shareholders who held class A shares. The plaintiff challenged the resolution and brought an action for nullity on the grounds, inter alia, that the resolution did not allow him to take over preferentially an equivalent percentage of the overall value of the newly created shares, thus infringing the provisions of Articles 93 b) and 394 of the Spanish Companies Act. 93 b) and 394 of the LSC. The Court of Appeal, for its part, argued that, given that in this case the exception to the pre-emptive subscription right was not used, all shareholders must be recognised as having the right to assume a number of the newly created shares proportional to the nominal value of those they held before the increase, annulling the resolution and confirming the first instance judgement.

Review of Interest: Ruling of the Supreme Court of September 13th, 2023. Voluntary fragmentation of a trademark and exhaustion of its rights.

The Supreme Court ruling of 13 September 2023 resolves the dispute that arose between a Spanish company that sued two distribution companies on the grounds that they had infringed its trademark rights. The Spanish company was the owner of two Spanish trade marks, and the distributors marketed identical products - consisting of artificial carbonated waters - under the same trade mark.

The distribution companies opposed the claim on the grounds that the plaintiff had infringed art. 36 of the Trademark Act, which provides that "*The right conferred by the registration of a trademark shall not entitle the proprietor to prohibit third parties from using the trademark for goods marketed in the European Economic Area under that trademark by the proprietor or with his consent*".

The Commercial Court, for its part, dismissed the claim brought against the distribution companies. The Provincial Court upheld the appeal lodged by the plaintiff and overturned the first instance judgment, ordering the distributors to cease all marketing and distribution in Spain.

The distribution companies appealed the second instance judgment to the Supreme Court, which argued as follows:

In 1999, the original trademark was split up and since then two groups of companies have held the trademark in different countries both inside and outside the European Economic Area.

Following that fragmentation, the proprietor of the trademark in Spain had engaged in conduct that reinforced the image of a single global trade mark by creating confusion in the relevant public as to the business origin of the goods that the trade mark identified.

The evidence included (i) access to advertising of products owned by the English company through the Spanish website, (ii) the use in the institutional advertising of the Spanish brand of the image of English products, (iii) the maintenance of references to British origin, etc.

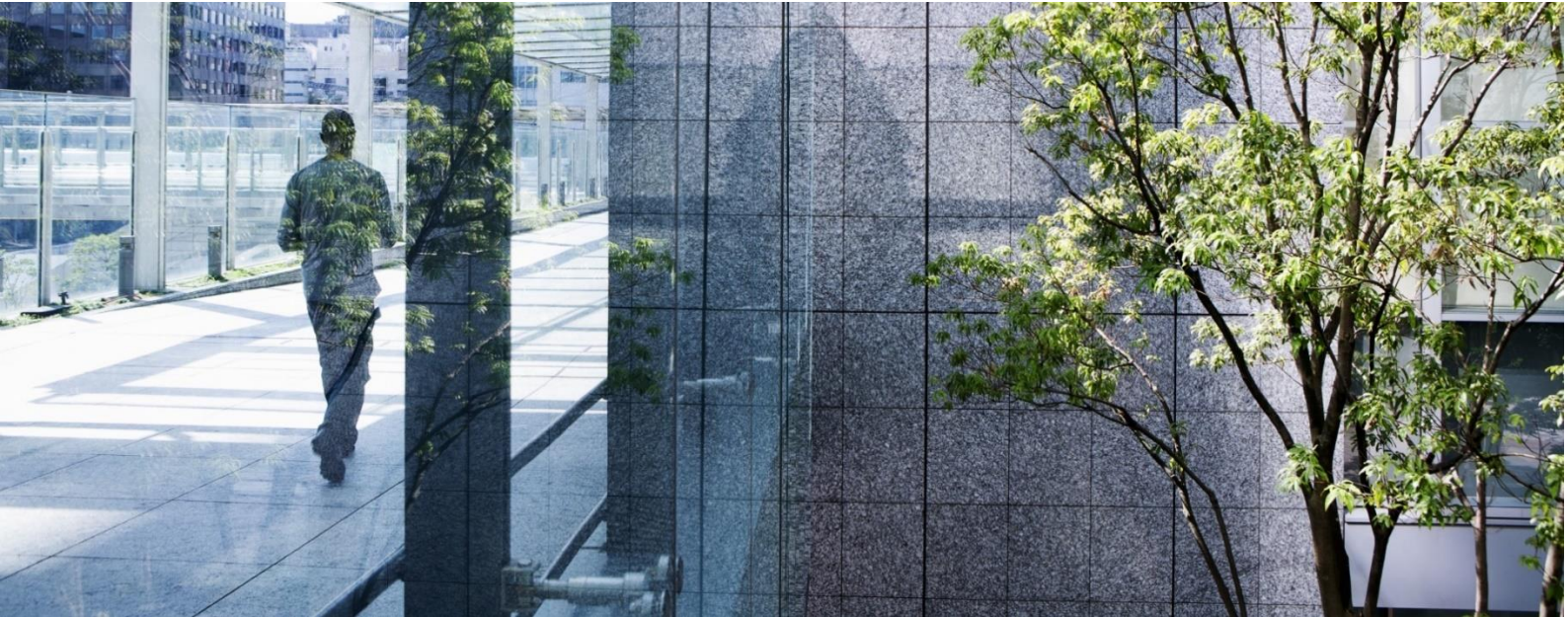
Based on the above, the Supreme Court relies on the doctrine of the Court of Justice of the European Union in case C-291/2016 -also on trademark law-, and concludes that the owner of the trademark in Spain cannot oppose the importation of identical goods bearing the same trademark from another member state, where the trademark is now owned by a third party who has acquired the rights by assignment, provided that one of the following requirements is met, either that the trademark owner has actively or deliberately promoted the image of a global and unique trademark or that there are economic links between the owner and the third party.

The Supreme Court analysed the evidence and qualified it as relevant given that, after the fragmentation of the trademark in 1999, the owner of the trademarks in Spain had continued to actively and deliberately promote the image of a single trade mark, which reinforced confusion among the relevant public. For all these reasons, the Court upheld the appeal on the grounds of infringement of art. 36 of the Trademark Act and overturned the second instance judgment.

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

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