



Corporate Law newsletter

Outstanding regulation developments

European Office for Artificial Intelligence. Commission Decision of 24 January 2024 establishing the European Office of Artificial Intelligence. [Full text.](#)

Banco de España. Circular 1/2024, of 26 January, of the Banco de España, to banks, credit cooperatives and other supervised institutions, regarding information on capital structure and amending Circular 1/2009, of 18 December, to credit institutions and other supervised institutions, in relation to information on the capital structure and equity shares of credit institutions and their branches. [Full text.](#)

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Other outstanding regulation developments

Exchange of tax information between European Union countries. Royal Decree 117/2024, of 30 January, which develops the rules and procedures for due diligence in the field of the mandatory automatic exchange of information communicated by platform operators, and amends the General Regulations on tax management and inspection actions and procedures and on the development of the common rules for tax application procedures, approved by Royal Decree 1065/2007, of 27 July, 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.](#)

Maritime law. Royal Decree 118/2024, of 30th January, establishing limitations to maritime navigation for the protection and recovery of the Mar Menor. [Full text.](#)

Tax information exchange. Order HAC/72/2024, of 1 February, approving form 040 "Census declaration of registration, modification and deregistration in the register of non-qualified foreign platform operators and in the register of other platform operators obliged to communicate information" and form 238 "Informative declaration for the communication of information by platform operators", and establishing the conditions and procedure for their presentation. [Full text.](#)

Personal Income Tax. Royal Decree 142/2024 of 6 February amending the Personal Income Tax Regulations,

approved by Royal Decree 439/2007, of 30 March, on withholdings and payments on account. [Full text.](#)

Territorial demarcation. Royal Decree 141/2024, of 6th February, modifying the Regulations on Population and Territorial Demarcation of Local Entities, approved by Royal Decree 1690/1986, of 11th July. [Complete Text.](#)

Presidency of the Government. Royal Decree 158/2024, of 8 February, modifying Royal Decree 890/2023, of 27 November, approving the structure of the Presidency of the Government. [Full text.](#)

Disability. Reforms article 49 of the Spanish Constitution of 15 February 2024 to reflect the values which inspire the protection of persons with disabilities, both nationally and internationally. [Full text.](#)

Ministry of Digital Transformation. Royal Decree 210/2024, of 27 February, establishing the basic organic structure of the Ministry for Digital Transformation and the Civil Service. [Full text.](#)

Emission allowances. Royal Decree 203/2024, of 27 February, which develops aspects relating to the free allocation of emission allowances for the years 2026-2030 and other aspects relating to the system for the exclusion of installations as from 2026. [Full text.](#)

LGTBI. Law 4/2023, of 28 February, for the real and effective equality of trans persons and for the guarantee of the rights of LGTBI persons. [Full text.](#)

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resolution of January, 15th, 2024. Electronic signature. [Full text.](#)

The DGSJFP dismissed the appeal lodged against the note of qualification issued by the commercial registrar, rejecting the filing of the annual accounts of a cooperative company on the grounds that the auditor of the accounts for the corresponding financial year had not been registered. Faced with the negative classification, the company appealed, providing all the documents corresponding to the deposit. Finally, the DGSJFP considers that the appellant company does not contest the defects in the qualification note and that, likewise, the aforementioned appeal cannot take into account the accompanying documentation, if this documentation is different to that which the registrar had in view when issuing his qualification. In this way, the DGSJFP establishes that the appeal is not the channel for rectifying the defects in the note, without prejudice to the fact that the interested parties may resubmit the deeds whose registration was not admitted to obtain a new qualification, and therefore dismisses the appeal and confirms the qualification note.

DGSJFP. Resolution of January 15th, 2024. Electronic signature. [Full text.](#)

The DGSJFP dismisses the appeal brought against the note of qualification issued by the commercial registrar rejecting the electronic filing of the annual accounts of a company. The registrar rejected the deposit because the certificate of the resolution approving the general meeting was provided by photocopy of the original signed, apparently with an electronic signature certificate. Faced with the negative classification, the company appealed. The DGSFP finally concluded that in the case of

telematic submission the registrar shall verify the signatures of the signatories of the certification containing the approval of agreements - which would have to be validated by the computer application permitted for this purpose - impossible in this case to validate said signature, finally considering it to be not affixed and thus reiterating the negative qualification note.

DGSJFP. Resolution of January 16th, 2024. Transformation of the type of company. [Full text.](#)

The DGSJFP dismisses the appeal filed against the negative qualification issued by the commercial registrar refusing to register a corporate agreement that seeks to render ineffective a previous agreement - already registered - on corporate transformation. The registrar refused to register the aforementioned agreement on the grounds that it had to comply with the same legal requirements as those laid down for transformation. Faced with the negative classification, the company appealed, arguing that the agreement had retroactive effects and that therefore the company had to be restored to the legal situation prior to the transformation and that no third party had been harmed. For its part, the DGSJFP considers that it cannot accept the assertion that the agreement to annul a previous transformation agreement should not meet the legal requirements for transformation. Similarly, it does not consider acceptable the assertion that no prejudice has been caused to third parties, because this is not the basis of the decision, but rather the need to respect their legal position in accordance with the declaration of nullity of agreements - thus complying with the criterion followed by the Directorate itself in previous decisions, including the decision of 2 October 2013.

Remarkable Case Law

Judgment of the Supreme Court of January 18th, 2024. Remuneration of directors. [Full text.](#)

The Supreme Court upheld the appeal lodged against the second instance judgement which addressed the issue of the deductibility of the remuneration received by the directors of a single-member company. Said remuneration was provided for in the articles of association, but had not been approved by the general meeting, as required by art. 217.2 LSC. To this effect, the appeal filed alleges infringement of said article due to the lack of agreement by the shareholders' meeting with respect to the directors' remuneration. In this respect, the Court argues that the requirement of approval by the general meeting does not apply in the case of companies with a sole shareholder, as this is a non-existent body for this type of company, since in a sole shareholder company the sole shareholder exercises the powers of the general meeting (art. 15 LSC). Consequently, the requirement for approval by the general meeting does not apply in such cases, and therefore the provision in the articles of association is self-sufficient to justify the remuneration made.

Judgment of the Supreme Court of 25 January 2024. Action for liability for debts against the administrator. [Full text.](#)

The Supreme Court dismisses the appeal filed against the judgment of the Provincial Court of La Rioja declaring the liability for debts under art. 367 of the administrator of a limited liability company. The director appealed in cassation, alleging that the second instance judgement had improperly applied art. 367.2 LSC, which establishes that "*corporate obligations whose fulfilment is judicially demanded by legitimate creditors shall be presumed to be dated after the occurrence of the cause of*

dissolution". In its opinion, the ruling had based the occurrence of the cause for dissolution on the mere failure to deposit the annual accounts for the financial year 2011 and subsequent years, such that all debts arising after that date were subsequent to the cause for dissolution. In this regard, the Supreme Court dismisses the appeal, and argues that it is possible to presume the existence of grounds for dissolution when: (i) the company has not filed its annual accounts with the Commercial Registry, and (ii) there are indications that it is in a loss-making situation. In this case, given the proven existence of qualified losses, the failure to deposit the accounts gave rise to the presumption of a cause for dissolution on that date, with the administrator being liable for the subsequent debts.

Judgment of the Supreme Court of February 7th, 2024. Liability for defective product. [Full Text.](#)

The Supreme Court upheld the appeal lodged against the judgment handed down by the Provincial Court of Palma de Mallorca, which dismissed the claim for damages for untimely filing of the claim against a company distributing prostheses that were implanted in the plaintiff. In this regard, the Supreme Court recalls that the provisions of art. 144 TRLGDCU must be taken into account, according to which the rights recognised to the injured party will be extinguished after 10 years, counting from the date on which the specific product causing the damage was put into circulation. In this regard, it states that the relevant time for calculating the 10 years is the date of implantation of the prosthesis in the plaintiff. Consequently, the Supreme Court overturned the appealed judgment and remanded the proceedings to the Provincial Court for a new judgment to be handed down.

Review of Interest: Explanatory Guide to the Foreign Investment Declaration Scheme.

On February 19th, 2024, the Ministry of Economy, Trade and Enterprise published on its website the [explanatory guide on the foreign investment declaration regime](#) in order to help clarify some aspects of the application of recent regulations on foreign investments, namely: (i) [Royal Decree 571/2023 of July 4th](#), on foreign investments, which updates the foreign investment declaration regime, incorporates new operations and modifies some of the declaration thresholds; (ii) the new [ministerial order \(Order ECM/57/2024 of 29 January\)](#), which regulates the procedures applicable to foreign investment declarations, as well as the procedures for the submission of annual reports; and (iii) the [Resolution of January 31st, 2024 of the Directorate General for International Trade and Investment](#), which approves the models for the processing and declaration of foreign investments in Spain and Spanish investments abroad.

The new transactions to be declared in the Foreign Investment Register are first of all covered by this guide. It states that all investment transactions by virtue of which: political rights are acquired ([incorporation, subscription of shares or assumption of shareholdings, in whole or in part, or acquisition of securities issued by resident persons or public or private entities](#)) by non-residents in a Spanish company, whether [or not it is listed on a stock exchange](#) (previously only transactions in unlisted companies were declared), provided that the non-resident investor holds or reaches 10% of the capital (or voting rights).

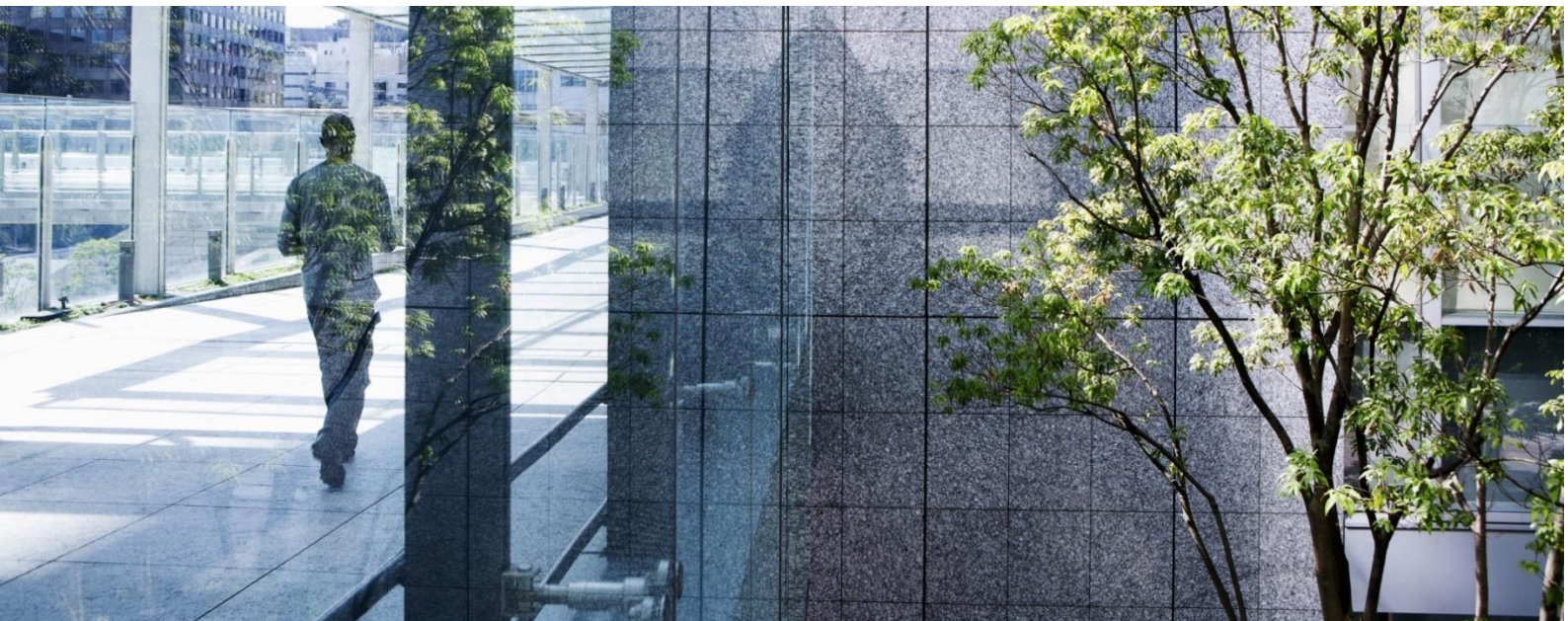
In relation to the [acquisition of units and shares in collective investment undertakings \(CIIs\) and closed-end collective investment undertakings \(UCIs\)](#), in which case the resident management entity is obliged to report the investment if the non-resident investor holds 10% or more of the net assets or capital of the CII or UCI with a resident manager. Likewise, in relation to [contributions by shareholders to the assets of Spanish companies that do not entail an increase in the share capital](#), the obligation to declare contributions to the net assets of a non-resident investor is introduced, provided that said investor holds at least 10% of the capital or voting rights of the Spanish company. The following must also be declared: the [incorporation and increase of the endowment of branches of non-residents](#); the [financing of Spanish companies through](#) any debt instrument whose amount exceeds €1,000,000 and whose amortisation period exceeds one calendar year; the [reinvestment of profits](#) from a 10% stake in the capital of a Spanish company; or the [acquisition of real estate](#) whose amount exceeds €500,000. All these operations must be declared within [a maximum period of one month](#) from the investment.

Another of the most relevant novelties refers to the so-called "[non-cooperative jurisdictions](#)", in which case it is stated that any investment from such jurisdictions must be declared regardless of the amount, term or percentage of the non-resident investor in the Spanish company.

The full text of the guide can be found at the following [link](#).

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