March 2024

Corporate Law newsletter

Outstanding regulation developments

Bank of Spain. Resolution of 15 March 2024, of the Executive Commission of the Banco de España, amending the Agreement of 10 December 2019, approving the system of delegation of powers. Full text.

Trans-European transport network. Royal Decree 249/2024, of 12 March, which implements the transposition of Directive (EU) 2021/1187 of the European Parliament and of the Council of 7 July 2021 on the rationalisation of measures to advance the implementation of the trans-European transport network (TEN-T). Full text.

Other outstanding regulation developments

Electronic communications operators. Resolution of 22 February 2024, of the National Markets and Competition Commission, publishing the Resolution of 22 February 2024, on the determination of the annual capital cost rate to be applied in the cost accounting for the financial year 2023 of the electronic communications operators declared to have significant market power. Full text.

Wealth tax. Order HAC/172/2024, of 26 February. Approves the list of securities traded in trading centres, with their average trading value corresponding to the fourth quarter of 2023, for the purposes of the Wealth Tax return for the year 2023 and the annual informative return on securities, insurance and income. Full text.

Ministry of the Presidency, Justice and Relations with Parliament. Royal Decree 204/2024, of 27 February, which develops the basic organic structure of the Ministry of the Presidency, Justice and Relations with the Courts, and modifies Royal Decree 1012/2022, of 5 December, which establishes the organic structure of the Office of the State Attorney General, regulates the inspection of services within its scope and establishes rules regarding its personnel. 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.

Wine sector. Royal Decree 250/2024, of 12 March, amending Royal Decree 905/2022, of 25 October, regulating intervention in the wine sector within the framework of the Strategic Plan of the Common Agricultural Policy, in matters of investment and green harvesting. Full text.

CNMV. Resolution of 13 March 2024, of the Presidency of the Comisión Nacional de los Mercados y la Competencia (CNMV) modifying that of 29 April 2021, delegating powers of the Presidency and approving the delegations of powers of other senior bodies of the body. Full text.

FROB. Resolution of 15 March 2024, of the Presidency of the FROB, on delegation of powers. Full text.

Electricity market. Resolution of 6 March 2024, of the National Markets and Competition Commission, modifying electricity operating procedures for the participation of demand and storage in non-frequency services and in the solution of technical restrictions and integration of hybridisation of technologies in the scheduling process. Full text.

Social Security. Royal Decree 322/2024, of 26 March, amending the General Regulations on Social Security Collection, approved by Royal Decree 1415/2004, of 11 June, and the General Regulations on Contribution and Settlement of other Social Security Rights, approved by Royal Decree 2064/1995, of 22 December. Full text.

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resolution of 5 February 2024. Liquidation of companies. Full text.

The DGSJFP upheld the appeal lodged against the qualification note issued by the Commercial Registrar, rejecting the declaration of extinction of a company - with the corresponding cancellation of the registration entries - on the grounds that the deed did not include the declaration by the liquidators that the creditors had been paid or their credits had been consigned, in accordance with art. 395 of the LSC. The registrar justified his decision on the grounds that there was an outstanding claim against the tax office. In view of the negative classification, the company appealed, arguing that the liquidation balance sheet showed that the company did not have any assets with which to satisfy its debt with the Tax Agency and that the existence of this credit should not prevent the cancellation of the company's registration entries. For its part, the DGSJFP states that the cancellation of such entries does not prejudice the creditor, since the company's capacity to be the holder of rights and obligations is maintained, the cancellation of the registration entries being merely a mechanical registration formula to record the company's vicissitude and, therefore, not prejudicing the creditors, it considers the content of the approved balance sheet as the liquidator's statement on the absence of assets to be valid.

DGSJFP. Resolution of 19 February 2024. Appointment of sole administrator. Full text.

The DGSJFP dismisses the appeal filed against the qualification note issued by the Commercial Registrar, rejecting the appointment of the sole administrator of a company in the liquidation phase of an arrangement with creditors, on the basis of art. 414.2 of the LC.

In view of the negative classification, the company lodged an appeal, arguing that the legal situation of liquidation does not imply automatic dissolution of the company, and that the corporate bodies have not been dismissed, but only their administrative powers have been suspended, which is why it understands that the appointment of the sole administrator should be valid. This appeal was resolved by the DGSJFP stating that the company's liquidation operations are the responsibility of the company's liquidators, and cannot be carried out by the company's administrators, as these are outside their remit. The DGSJFP therefore concluded that, since the state of liquidation was in force, administrators could not be appointed and dismissed the appeal.

DGSJFP. Resolution of 4 March 2024. Annual Accounts. Full text.

The DGSJFP dismissed the appeal filed against the negative qualification issued by the Commercial Registrar, rejecting the cancellation of the deposit entry of annual accounts deposited in error, because they had not been approved by the General Meeting of the Company. The Registrar refused the cancellation of the deposit on the basis of articles 40.2 of the RRM and 1 of the LH, according to which the modification of the entries made in the Register is under the protection of the courts. In view of the negative classification, the company appealed, claiming that, having been notified of the error, and in accordance with article 427 of the RRM, relating to the rectification of errors, the Registrar should rectify the entry ex officio. However, the DGSJFP states that this ex officio action is not appropriate, as it is an error derived from the false content of the inscribable title, of which the registrar cannot be aware, and therefore cannot be rectified without the consent of the company to which it refers or without a court decision ordering it.

Remarkable Case Law

Judgment of the General Court of the European Union of 6 March 2024. Social networks and dissemination of designs. Full text.

The General Court of the European Union (hereinafter "GC of the EU") dismissed the appeal filed by a well-known worldwide brand of trainers against the decision of the European Union Intellectual Property Office or "EUIPO" to declare invalid a Community design consisting of a trainer in which a word appeared silkscreened on its sole. In this case, a well-known singer had promoted the shoes two years before the trademark applied for registration of the design. In view of this, a third company requested the cancellation of the registration as it considered that the design had been disclosed prior to the start of the grace period according to art. 7.1 of Council Regulation 6/2002 on Community Designs. This annulment was upheld by both the EUIPO Cancellation Division and the Board of Appeal. The EUAT examined (i) whether the evidence submitted by the company seeking the cancellation of the design showed that it had been disclosed before the start of the grace period and also (ii) whether the trainer brand had provided the necessary evidence to establish that, despite the advertising carried out by the singer, the footwear had gone unnoticed by experts in the sector (*"normal course of business to the circles specialised in the sector concerned*"). For its part, the well-known brand argued that the evidence was insufficient to prove disclosure of the design. The GC considered that the design of the shoes was indeed disclosed before the grace period, and consequently annulled the application for registration of the design.

Judgment of the Supreme Court of 20 February 2024. Liability for corporate debts. Full text.

The Supreme Court dismisses the cassation appeal lodged against the ruling of the Barcelona Provincial Court on the liability of the directors of an S.L. on grounds of dissolution in accordance with articles 241 and 367 of the LSC. In this case, the company had terminated the employment relationship with the plaintiff, but never paid him the corresponding compensation due to insufficient credits in the dissolution process. In view of this, the former employee sued the administrators, claiming that the company was subject to the grounds for dissolution in article 363.3 of the LSC and that they had not adopted the necessary measures. The PA partially upheld his claims and the plaintiff appealed in cassation, alleging infringement of art. 241 LSC, considering that his reasoning, that the company was in a state of dissolution, was sufficient to prove the negligence of the administrators and the direct causal impact that such action had on his assets. In this respect, the Supreme Court concludes, relying on previous judgments, that it is undeniable that the directors must comply with the duties relating to the dissolution and liquidation of the company. However, in order to consider that an individual action for liability of the directors has been brought pursuant to art. 241 LSC, it is not sufficient for the company to have been in a state of dissolution and not to have been formally dissolved. For the SC, it is necessary in these cases to go a step further and prove that, had the dissolution been carried out correctly, it would have been possible for the plaintiff to collect his claim, which it does not consider possible in this case, and therefore dismisses the appeal from which this judgement arises.

Review of Interest: Artificial Intelligence Law

On 13 March 2024, the European Parliament approved the Artificial Intelligence Act, which aims to boost innovation and protect fundamental rights, the rule of law and environmental sustainability in the face of the new risks posed by Artificial Intelligence (hereinafter "**AI**"). To this end, the regulation establishes a series of obligations on the use of AI according to its potential risks and level of impact, among which we highlight:

i. The new regulation prohibits certain AI applications that infringe on citizens' rights and the indiscriminate capture of facial images to create facial recognition databases.

ii. AI that manipulates human behaviour or exploits people's vulnerability is also banned, as is emotion recognition in certain settings such as workplaces or schools when it is based solely on a person's profile or an assessment of their characteristics.

iii. The use of biometric identification systems by law enforcement agencies for "predictive policing" is prohibited, except in very specific situations subject to very strict safeguards and prior judicial or administrative authorisation.

iv. Obligations are also foreseen for other AI systems with a high risk to health or safety. The aim is for systems to assess and reduce risks, to be accurate, to have human oversight, and for residents on EU territory to have the right to complain about these systems and to receive explanations of their decisions if they affect their rights.

v. The Act adds transparency requirements for AI systems in order to respect EU copyright law. More powerful AI systems may pose more risks and additional requirements will have to be met. In this regard, AI-generated images, audio or video content must be clearly labelled as such.

vi. Finally, the standard aims to provide SMEs and start-ups with testing and trial spaces under real-life conditions at national level so that they can train innovative AI before commercialisation.

All these prohibitions apply equally to all IA systems operating within the European Union. Compliance will be particularly monitored when they are considered high risk, i.e. when they are used in the fields of environment, safety and health.

The law is currently awaiting final legal-linguistic verification. Subsequently, it will also have to be formally adopted by the Council. Its final adoption through the corrigendum procedure is foreseen before the end of the legislature and it will be fully applicable 24 months after its entry into force with some exceptions. The prohibitions of practices will apply 6 months after entry into force, the codes of good practice after 9 months, the rules on general-purpose IA after 12 months and the obligations for high-risk systems after 36 months.

It is expected to enter into force around the end of 2026.

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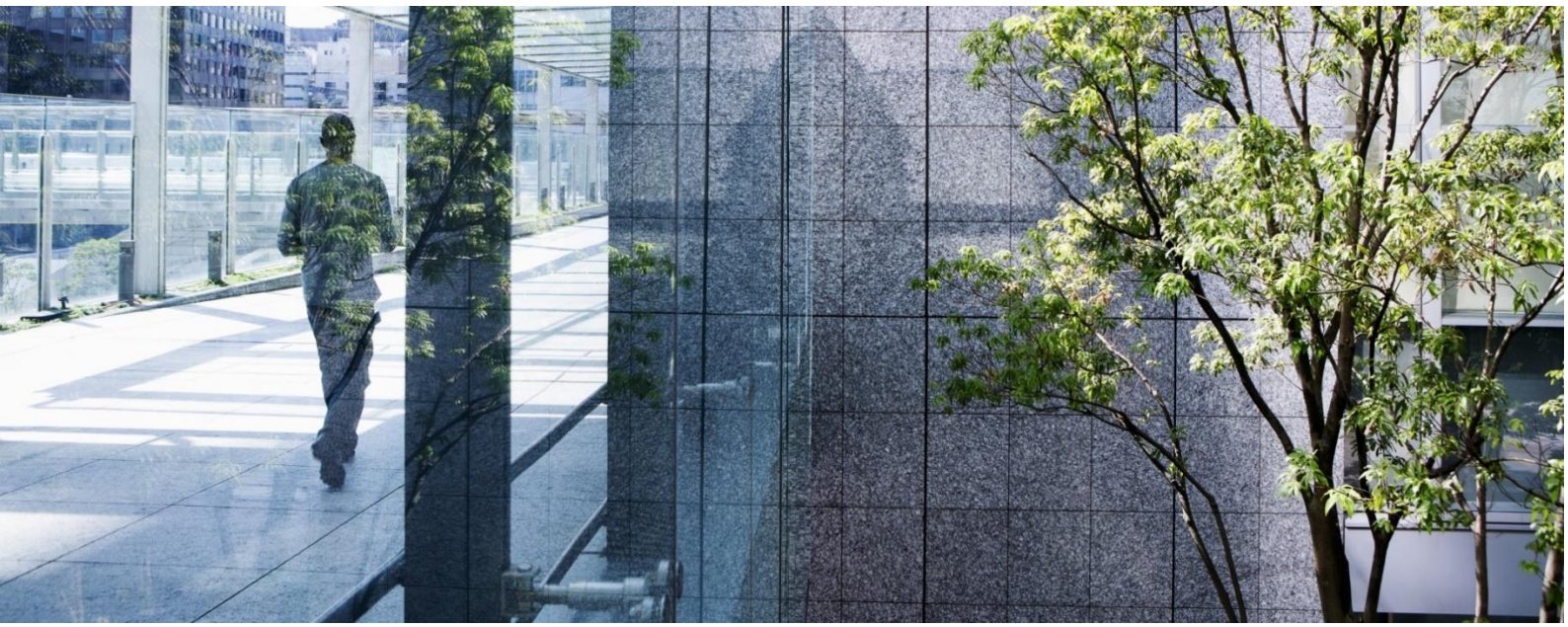

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