



Corporate Law newsletter

Outstanding regulation developments

Credit institutions and investment services companies. Asset management companies. Royal Decree-Law 1/2022 of January 18th, which modifies Law 9/2012 of November 14th, on the restructuring and resolution of credit institutions; Law 11/2015 of June 18th, on the recovery and resolution of credit institutions and investment services companies; and Royal Decree 1559/2012 of November 15th, which establishes the legal regime of asset management companies, in relation to the legal regime of the Asset Management Company arising from the Bank Restructuring. [Full text.](#)

Access to housing. Royal Decree 42/2022 of January 18th, which regulates the Youth Rental Bonus and the State Plan for access to housing 2022-2025. [Full text.](#)

For further information, please consult [here](#) the section of the BOE dedicated to the COVID-19 crisis with the consolidated regulations.

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

Organization. Royal Decree 41/2022, of January 12th, which creates the Organizing Committee of the Spanish Presidency of the European Union. [Full text.](#)

Agreements. Resolution of January 25th, of the National Securities Market Commission, publish the Agreement with the Bank of Spain and the Ministry of Economic Affairs and Digital Transformation, for the promotion and development of the Financial Education Plan. [Full text.](#)

Urgent Measures. Resolution of January 25th, of the Congress of Deputies, ordering the publication of the Validation Agreement of Royal Decree-Law 29/2021, of December 21st, by which urgent measures are adopted in the energy field to promote electric mobility, self-consumption and the deployment of renewable energy. [Full text.](#)

Health cohesion fund. Order SND/1505/2021, of December 21st, which updates annexes I, II, and III, of the Royal Decree 1207/2006 of October 20th, which regulates the management of the Health Cohesion Fund. [Full text.](#)

Agreements. Resolution of December 27th, of the Presidency of the FROB, which publishes the Addendum to the extension and modification of the Collaboration Agreement with the National Securities Market Commission, regarding the recovery and resolution of investment services companies. [Full text.](#)

Urgent Measures. Resolution of January 25th, of the Congress of Deputies, ordering the publication the Validation Agreement of the Royal Decree-Law, of December 17th, by which urgent complementary measures are adopted to repairing the damage caused by volcanic eruptions and for the economic and social recovery of the island of La Palma. [Full text.](#)

Telecommunications. Communication 1/2021, of December 20th, of the National Commission of Markets and Competition, which publishes the Guidelines on the resolution of conflicts in matters of access to physical infrastructures capable of hosting high-speed electronic communications networks. [Full text.](#)

Social Security. Passive Classes. Royal Decree 65/2022 of January 25th, on updating Social Security system pensions, Passive Class pensions and other public social benefits for the year 2022. [Full text.](#)

Please [click here](#) to access our analysis of key aspects in the labor, tax, corporative or financial field that companies will have to face, prepared by our specialist of Mazars, and also to our Covid Talks.

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Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Deposit of annual accounts. Resolution of December 20th, 2021. [Full text.](#)

The DGSJFP analyses the appeal filed against the qualification note of the mercantile register by which it's resolved not to file the annual accounts of the year 2020. The auditor was appointed in December 2019 for three years by the Company, and through registration made in January 2021, made his revocation for just cause by universal council agreement. In this context, the registrar suspends the filing of the accounts because the signed auditor's report and the certification that the deposited accounts correspond to the audited accounts are not attached, indicating that the auditor's report is necessary, even though his appointment is voluntary, in accordance with art. 279 LSC. However, the DGSJFP revokes the Registrar's Qualification note based on the need to duly substantiate such qualification notes, since it points out that in this case the registrar merely demanded the auditor's report, even though the audit was voluntary, but without adding any reason that would allow him to intuit the reason why the situation prior to the revocation of the auditors should remain in place. The DGSJFP therefore states that the negative classification of the deposit must be revoked.

DGSJFP. Appointment of directors. Resolution of December 23rd, 2021. [Full Text.](#)

The DGSJFP rules on the suspension of the registration of the appointment of directors of a public limited company. In this case, the General Meeting and the Board of the company in question proceeded to renew the members of the Board for a period of six months. This appointment was suspended by the registrar on the grounds that the appointment of a director, other than in cases

of co-optation, must be made for the term of office specified in the company's articles of association. The company appealed against the suspension, arguing that the term provided for in the articles of association only applies to the first appointment, while successive reappointments are subject to the term decided by the general meeting, subject to a limit of six years. However, the DGSJFP upheld the defect appealed against, pointing out that the clarity of articles 221.2 LSC and 124.3 RRM do not allow the general meeting, when appointing a director, to set a term of office for the position of director that is less than that established in the articles of association, which is six years, and it is not possible to appoint directors for the requested term of six months.

DGSJFP. Company name and corporate purpose. Resolution of January 3rd, 2022. [Full text.](#)

The appeal lodged against the refusal of the commercial register to log the deed of incorporation of a company is resolved. A limited company is constituted under a name that includes the word "Engineering", and whose corporate purpose consists of real estate development, including activities such as construction, sale, and rental of real estate on its own account. The registrar rates it negatively since, in its opinion, the name refers to activities not included in its corporate purpose and may therefore mislead in commercial traffic. However, the DGSJFP revokes that classification, arguing that the name chosen meets the criterion of unity and originality, in its strictest sense of non-coincidence. Similarly, after an analysis of the object and name of the company, it concludes that the engineering activity makes clear reference to the activities included in the object of the company, relating to real estate development and construction.

Remarkable Case Laws.

Ruling of the Supreme Court of January 10th. Compensation of credits in the bankruptcy venue. [Full text.](#)

The Supreme Court decides the set-off of a claim claimed after the debtor has been declared in bankruptcy and is not included in the list of creditors. As is known, in general, the declaration of insolvency produces, among other effects, that the claims against the previous common debtor are part of the liabilities. These bankruptcy claims are subject to the rules of the *par conditio creditorum*, which prevents their payment outside the agreement or liquidation, which is why article 58 of the Bankruptcy Law prohibits the compensation of the claims and debts of the bankrupt. However, this regime is exceptional when the requirements of compensation has been met before the declaration of insolvency, as in that case, the compensation, whose fills existed prior to the declaration, can produce its effects, even if the judicial decision or administrative act declaring it has been passed after it. Therefore, the SC considers that it is not necessary for the offset credit to have been included in the list of creditors, as it is not included in the passive mass to be subject to the solution adopted in the insolvency proceedings and, therefore, its extinctive effectiveness goes back to the time when the requirements for offsetting were met before the declaration of insolvency proceedings.

Ruling of the Barcelona Provincial Court of January 13th. Patent law. [Full Text.](#)

The Barcelona Provincial Court upheld the appeal brought by a supermarket chain against the judgment of the commercial court which ordered the withdrawal of its food processor for infringement of the patent rights held by the plaintiff. The Court of Appeal decided the appeal and considered the patent to be null and void on two grounds: addition of matter and lack of inventive step. In relation to the first aspect, it

considers that the company holding the patent right included new elements in its patent application during its prosecution before the EPO. Therefore, in the final wording of the claim, by including those features, it infringed the prohibition on extending protection in relation to what was initially applied for. On the other hand, regarding the lack of inventive step, the judgment carries out an exhaustive analysis of the kitchen robots marketed by both companies. It concludes that the feature claimed as a solution to the technical problem was already in the prior art. In view of the above, the judgment finally declared the patent null and void.

Ruling of the Madrid Provincial Court of January 3rd. Unfair competition and illegal advertising. [Full Text.](#)

The Madrid Provincial Court decides on the appeal of a declaratory action of unfair competition brought by a tobacco distribution company against another tobacco company due to unlawful advertising carried out by the defendant with respect to a tobacco heating device. The judgment analyses whether the information offered in the media regarding its products can be considered "commercial communication" activity in accordance with the provisions of art. 2 b) of Law 1823/2005. The Provincial Court concludes that by making express reference to the characteristics, conditions, and advantages of the use of the product in relation to the traditional way in which tobacco has been consumed, these do not have a merely informative content, being subsumable in the concept of advertising for the purposes of art. 2 of Law 1823/2005, and, therefore, in the prohibition of advertising of tobacco products established in art. 9.1 of the law. The appeal was dismissed, and the first instance judgment was upheld, condemning the appellant to cease its advertising activities in accordance with the Unfair Competition Law.

Review of Interest: CNMV Circular 1/2022, of January 10, regarding advertising of crypto-assets presented as investment objects.

Given the increasing growth of investments and opportunities in the sector of digital assets, such as cryptocurrencies, and their consequent advertising activity, with the risk they carry due to the lack of information on their operation and nature, the Spanish National Securities Market Commission has been forced to regulate the advertising of these digital assets.

The Circular gives a brief initial definition of what a cryptoasset is "*a digital representation of a right, asset or security that can be transferred or stored electronically, using distributed registry technologies or other similar technology*".

Although Circular 2/2020 already existed previously, which partially regulated this issue, the main purpose of Circular 1/2022 is to develop the requirements, principles and criteria to which the advertising activity on these digital *assets that are not considered financial instruments* must be subject, when they are presented as an investment opportunity.

The RDL 5/2021 in its D.F.2^a contemplates the extraordinary power of the CNMV to administratively control the advertising of crypto-assets, and according to which "*the CNMV is empowered to develop, by means of Circular, the objective and subjective scope, as well as the control mechanisms and procedures to be applied*". Its F.D.2 establishes its entry into force as from February 17th, 2022.

The scope of application of the circular will be investment advertising, addressed to investors in Spain, within the geographical framework of the same and promoting its acquisition, referring to its value and profitability.

Crypto-asset service providers, advertising service providers and any legal entity that, outside the framework of the above, carries out advertising activity on crypto-assets are subject.

The principles to which Rule 5 and Annex I refer are those of *clarity, consistency, integrity, intellectual accessibility and physical accessibility*, in a more generic way.

More particularly, the principles on special risks refer to warning about crypto-assets as high-risk investment products.

The legal warning will be required in all advertising about investment in crypto-assets, indicating the following sentences: "*Investment in crypto-assets is not regulated, may not be suitable for retail investors and the full amount invested may be lost*"; and a link with the sentence "*It is important to read and understand the risks of this investment which are explained in detail in this location*" redirecting and indicating the risks indicated in the circular in its Annex II. Where the medium used allows only one indication, reference shall be made to the site where information on the risks can be found and to the importance of reading that information.

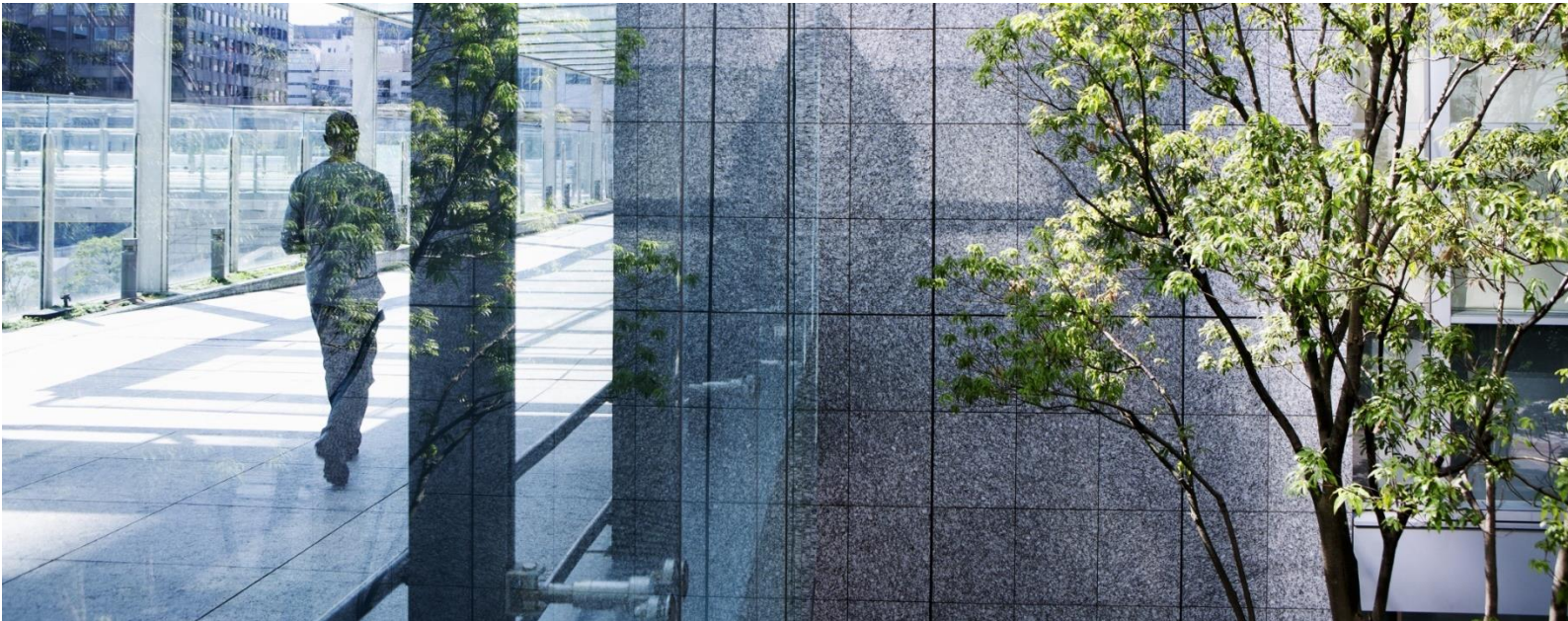
The supervisory function will be granted to the CNMV, and Rule 6 regulates the procedure to require the cessation or rectification of the advertising activity, *establishing a requirement of prior authorization in the case of mass communication*, and Rule 7 regulates this prior communication.

Finally, it should be noted that failure to comply with the provisions of this Circular, apart from the penalties of cessation of activity, will also entail the penalties provided for in the TRLMV.

The full text can be consulted at the [following link](#).

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