

Remark

Royal Decree-Law 15/2017, of 6 October, on urgent measures concerning the mobility of economic operators within the territory of Spain

9 October 2017

On Saturday 7 October 2017, Royal Decree-Law 15/2017, of 6 October, on urgent measures concerning the mobility of economic operators within the territory of Spain, (hereinafter "**Royal Decree-Law 15/2017**"), came into force. The purpose of this decree is to make it quicker and easier for companies to relocate their registered office within Spain, and to achieve this Article 285 of the Corporate Enterprises Act has been amended.

The purpose of Royal Decree-Law 15/2017, as its title indicates, is to ensure that differences between possible interpretations, and corporate disputes, do not hinder companies from relocating their headquarters within Spain, and to this end Article 285 of the Corporate Enterprises Act has been amended. This amendment makes it perfectly clear that, as a general rule, the authority to relocate a company's registered office lies with the board of directors, and that this power can only be revoked by the partners/shareholders of a company. In the event that the partners/shareholders decide to revoke this power they have to amend the company's bylaws specifying that the board of directors does not have the authority to make this decision.

The only part of the Corporate Enterprises Act that has been amended by Royal Decree-Law 15/2017 is the second section of Article 285, whose original wording came from the First Final Provision of Act 9/2015, of 25 May on urgent measures concerning insolvency. The final amended text of Article 285 of the Corporate Enterprises Act reads as follows:

Article 285 Assignment of powers

1. *"Only a general meeting of shareholders has the power to amend the bylaws of a company.*
2. *Notwithstanding the above, the board of directors of a company shall have the power to relocate the registered office of the company within Spain, unless it is specified otherwise in the corporate bylaws. **It will be understood that the bylaws specify otherwise solely when they contain a provision that expressly says that the board of directors does not have the power to move the registered office within Spain.**"*

Consequently, unless the bylaws of a company expressly state that the board of directors does not have the power to move the registered office within Spain, the board of directors shall have the power to relocate the company's headquarters within Spain.



If a company decides to relocate its headquarters, it will still have to execute a public document certifying the change of registered office address and register it at the Companies Registry.

When registering this type of public instrument at the Companies Registry, there is a certain procedure that must be followed. The public instrument certifying the change of registered office must first be filed at the Companies Registry where the company in question is already registered. Next, this Registry will issue a certified true copy of all the company's entries in the Registry, and this certificate should be filed, together with the public instrument certifying the change of registered office address, at the Companies Registry of the place where the company has decided to move to.

It should be noted that Royal Decree-Law 15/2017 contains a provisional regulation which is applicable to corporate bylaws which were approved before the amendment of Article 285 came into force. Under this regulation, the power to move the registered office of a company within Spain will be deemed to lie with the board of directors at all times, unless an amendment of the bylaws expressly stating that the board of directors does not have the authority to change the registered office within Spain is approved after the coming into force of Royal Decree-Law 15/2017.

Therefore, for the purposes contemplated in the amended Article 285.2 of the Corporate Enterprises Act, it will be understood that that the only circumstances in which a board of directors does not have the power to move the headquarters of a company within Spain will be when an amendment of the bylaws to this effect is approved subsequent to the date on which Royal Decree-Law 15/2017 came into force, that is to say, after 7 October, 2017. This amendment should clearly specify that the board of directors does not have the authority to move the registered office within Spain.

In conclusion, as from 7 October 2017, boards of directors have had the power to relocate the registered office of the company within Spain.

If you would like to see the Order, please follow this [link](#).

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