

NEWSLETTER
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LEGISLATIVE UPDATE

1. Spanish Legislation

1.1 Law 2/2019, of 1st March, amending the consolidated text of the Intellectual Property Law, approved by Royal Legislative Decree 1/1996, of 12th April, and incorporating into Spanish law Directive 2014/26/EU of the European Parliament and of the Council, of 26th February 2014, and Directive (EU) 2017/1564 of the European Parliament and of the Council, of 13th September 2017.

The main purpose of this law is to amend the consolidated text of the Law on Intellectual Property, approved by Royal Legislative Decree 1/1996 of 12th April 1996.

Directive 2014/26/EU influences the content of the rewritten text of the Intellectual Property Law, affecting multi-territorial authorisations or certain aspects related to transparency, which were not yet included in the aforementioned regulation and which will entail a reorganisation of the content of Title IV of the third book of the rewritten text of the Intellectual Property Law.

The objective is to strengthen the transparency and management of intellectual property rights, for which new instruments are created to improve control and accountability by the governing and representative bodies of that entity.

[See more.](#)

1.2 Royal Decree-Law 7/2019, of 1st March, on urgent measures relating to housing and rent.

Following the repeal of Royal Decree Law 21/2018, of 14 December, on Urgent Measures in the field of housing, the Government approved on 1 March a new Royal Decree Law on Urgent Measures in the field of housing and renting reforming, among other regulatory texts, Law 29/1994, of 24 November, on urban leases with regard to the legal regulation of housing lease contracts.

To summarize, the most significant reform falls on the refusal of the legal extension due to necessity. For it to operate, it must have been expressly included in the contract. It should be borne in mind that in no case will this cause of termination operate when the agreed duration of the contract is greater than that of the legal extension, this being a tool available to the lessor to enforce the mandatory extension of the contract.

In addition, article 10 of the LAU (Law for Urban Rents) has been amended to deal with tacit legal extension. The period of notice has been increased to notify the will of any of the parties not to operate this extension. The rule provides that from one to four months is the minimum period of notice available to the lessor to notify his intention not to extend the contract for any longer, and from one to two months is the period of notice in case it is the lessee who wants to terminate the contract. As such, the parties can know sufficiently in advance the intention of the other party to the contract with respect to the duration of the contract, and avoid the damages arising from an unexpected notice of termination of the lease.

On the other hand, article 7.2 of the LAU is deleted. It is no longer necessary to register the rental contract in the Land Registry to take effect against third parties for the first five years of the contract, or seven years if the lessor is a legal entity.

Finally, article 20 of the LAU is modified, which provides that the expenses of real estate management and the formalization of the lease contract shall be borne by the lessor if the latter is a legal person. This is to put an end to the previous premise that the lessee assumes the costs of real estate management.

[See more.](#)

1.3 Law 5/2019, of 15th March, regulating real estate credit agreements.

On 16th March, the Official State Gazette published Law 5/2019 of 15th March regulating Real Estate Credit Contracts, which came into force three months after its publication.

The result is a reform of enormous practical significance that deals with a specific loan/credit modality identified as a Real Estate Credit Contract.

The new regulation has two main objectives, firstly, the transposition of Directive 2014/17/EU of the Parliament and of the Council of 4th February 2014 on credit agreements concluded with consumers for immovable property for residential use, and thus, establish and strengthen certain rules for the protection of natural persons who are debtors of loans that are secured by mortgage.

It has an express impact on transparency and advertising regulations. Highlighting a detailed regulation of the pre-contractual or informative phase, with the aim of guaranteeing that the borrower has at his disposal the necessary information, with enough notice, so that he can fully understand the economic and legal consequences of the loan.

It applies to loan contracts granted by natural or legal persons, when the borrower, guarantor or guarantor is a natural person and the purpose of the contract is to grant loans with a mortgage guarantee or other real right of guarantee on a property for residential use or granting loans whose purpose is to acquire or retain property rights over land or property built or to be built, provided that the borrower, guarantor or guarantor is a consumer. [See more.](#)

2. European Provisions

2.1 Commission Delegated Regulation (EU) 2019/348 of 25th October 2018 supplementing Directive 2014/59/EU of the European Parliament and of the Council as regards technical regulatory standards specifying criteria for assessing the impact of an entity's non-viability on financial markets, other entities and funding conditions. [See more.](#)

2.2 Commission Implementing Regulation (EU) 2019/368 of 4th March 2019 [See more.](#)

2.3 Commission Implementing Regulation (EU) 2019/370 of 7th March 2019 amending Regulation (EC) No 1635/2006 laying down detailed rules for the

application of Council Regulation (EEC) No 737/90 on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union. [See more.](#)

2.4 Commission Implementing Regulation (EU) 2019/386 of 11th March 2019 laying down rules, following the withdrawal of the United Kingdom from the Union, on the allocation of tariff quotas for certain agricultural products included in the WTO list for the Union and on the import licences issued and the import rights allocated under those tariff quotas. [See more.](#)

2.5 Commission Regulation Delegate (EU) 2019/396 of 19th December 2018 amending Regulation Delegate (EU) 2015/2205, Regulation Delegate (EU) 2016/592 and Regulation Delegate (EU) 2016/1178 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the effective date of the netting obligation for certain types of contracts. [See more.](#)

3. Administrative rulings

3.1 Resolution of 5th March 2019, of the Institute of Accounting and Auditing of Accounts, developing the criteria for the presentation of financial instruments and other accounting aspects related to the mercantile regulation of capital companies.

This resolution establishes the necessary requirements for the correct presentation of financial instruments and other accounting aspects related to the mercantile regulation of capital companies.

The main objective is to develop the criteria for the registration of the accounting documentation contemplated in the mercantile regulation of capital companies. The resolution refers to operations carried out by commercial companies such as: increase and reduction of capital, distribution of the issue premium, issue of bonds, dissolution and liquidation, structural modifications and change of domicile, among others. [See more.](#)

4. Judicial Decisions

4.1 Judgment of the General Court (Fourth Chamber) of 20th March 2019. Hercules Club de Fútbol, SAD v European Commission on aid granted by Spain to certain professional football clubs. Decision declaring the aid incompatible with the internal market. [See more.](#)

4.2 Judgment of the Court (Fourth Chamber) of 27th March 2019. Proceedings brought by Oy Hartwall Ab concerning the refusal to register or to invalidate a figurative mark on the ground of an unspecified assessment of its distinctive character on the ground that the graphic representation was considered insufficiently clear and precise. [See more.](#)

4.3 Judgment of the Court (Grand Chamber) of 26th March 2019. Abanca Corporación Bancaria SA and Bankia SA v Alberto García Salamanca Santos and Others on the declaration of the partially unfair nature of the early termination clause in consumer contracts. [See more.](#)

5. Directorate General for Registers and Notaries

5.1 A MERGER IN WHICH THE ABSORBING COMPANY IS WHOLLY OWNED BY THE ABSORBED COMPANY.

Resolution of March 1st, 2019, of the General Directorate of Registries and Notaries, in the appeal filed against the qualification note issued by the commercial registrar, rejecting the registration of reverse merger agreements.

Summary: The registration and notarisation of a merger in which the absorbing company is wholly owned by the absorbed company and the latter is in the liquidation phase is requested. Merger agreements are adopted by the sole shareholder of the absorbing company, who is, in turn, the liquidator of the absorbed company as the administrative body, and acts on its behalf.

The Registrar rejects the registration because in its opinion it is necessary to hold a meeting of the absorbed company and because the capital increase of the absorbing company has not respected the requirements of article 303.2 of the LSC (Corporations Law).

The DGRN establishes that in the event of a reverse merger, the shareholders of the absorbed company must be called to a general meeting of shareholders because it is their shareholder interests that are discussed and that eventually become the attribution of shares or holdings in the absorbing company. It is not acceptable to state that since there is no alteration of its shareholding in the capital, its pronouncement at the general meeting is not required. [See more.](#)

5.2 CAPITAL INCREASE OUT OF PROFITS.

Resolution of 6 March 2019, of the Directorate General of Registries and Notaries, in the appeal filed against the refusal of the commercial registrar to register a deed increasing the share capital of a company.

Summary: This resolution seeks an increase in the share capital of a limited liability company, charged to profits. Finally, there is no inscription since in the Registrar's opinion "there is no evidence that the capital increase has been agreed on the basis of a balance sheet approved by the general meeting, referring to a date within the six months prior to the capital increase agreement".

The Registrar stresses the impossibility of creating shares that do not correspond to an effective contribution to the company. Reference is made to the requirement of a justification of the effective existence of these funds in the corporate patrimony and their availability to be transformed into capital, a justification which, according to the legislator, must consist of a balance sheet duly approved by the general meeting with a certain amount of time and verified by an auditor in the terms established in article 303.2 of the Corporate Law. In addition, if they are not fully available, they do not meet the legal requirements for capitalization under article 303.1 of the LSC. [See more.](#)

5.3 TWO-BUILDING MORTGAGE. DOMICILE OF THE MORTGAGED PROPERTY. WHERE THERE IS A HOUSE AND A GARAGE.

Resolution of March 6, 2019, of the General Directorate of Registries and Notaries, in the appeal filed against the qualification note of the property registrar suspending the registration of a mortgage loan deed.

Summary: In this resolution, the Registrar points out that there is a defect and therefore refuses to register a mortgage loan deed. The Registrar points out that in the case in which two properties are to be mortgaged, it must be determined which of the two must be considered as domicile for the purposes of notifications or if the notification must be practiced separately in each of the properties. The registry principle of specialty requires that among the circumstances that must necessarily contain a mortgage registration in guarantee of a loan be clearly indicated the address for notification purposes and the way in which the borrower can repay the capital lent, as well as mortgage liability for ordinary interest and, where appropriate, delay, and costs and expenses.

In addition, article 682-2.2.º of the Civil Procedure Law determines that when mortgaged property is being pursued, the following requirement must be met: "That, in the same deed, a domicile be established, which the debtor shall establish, for the practice of the requirements and notifications".

In summary, the recurring notary understands that since the second property is a parking space, the address for notifications must be understood as referring, in any case, to the property described in number one, the dwelling.

The DGRN upholds the appeal and revokes the qualification note of the Registrar.

[See more.](#)

5.4 LIQUIDATION OF AN S.L.

Resolution of 14 February 2019, of the Directorate General of Registries and Notaries, in the appeal filed against the refusal of the mercantile and movable goods registrar IX of Barcelona to register the deed of liquidation of a company.

Summary: The Registrar rejects the registration of a deed of liquidation of an S.L. since the partners expressly and unanimously oppose the payment of the liquidation fee. The liquidation is carried out contrary to articles 393 and 394 of the LSC.

The DGRN establishes that, despite the fact that the consent of the partners was declared at the general meeting, it is essential that the unanimous agreement of the partners be adopted once the partible liquid assets have been determined as well as the way of dividing them and awarding them to the partners, provided that the liquidation project has been approved by the meeting.

The DGRN has therefore agreed to dismiss the appeal. [See more.](#)

5.5 CONSTITUTION OF A S.L. SOCIAL OBJECTIVE ACTIVITIES WITH LEGAL RESERVE. FINANCIAL CONSULTANCY.

Resolution of 27th February 2019, of the Directorate General of Registries and Notaries, in the appeal filed against the qualification note issued by the registrar of mercantile and movable goods III of Palma de Mallorca, which rejects the registration of a public deed of incorporation of a limited liability company.

Summary: This is the constitution of a limited company, the object and activities of which include the following: "financial consultancy (...)"

The registrar will not carry out the registration since in its opinion it considers that the financial consultancy activity "includes investment services and activities of a general nature since, in accordance with article 141-g of the Securities Market Law, investment advice is considered as such in this type of services and the same results from article 141-c and 143-d of

the aforementioned Law. These activities are reserved for investment service companies (articles 143 and 144 of the Securities Market Act). And in accordance with the provisions of article 144.5 of the Law, the Mercantile Registry shall not register those entities whose corporate purpose is contrary to this Law".

The DGRN argues, confirming the Registrar's action, that for a normal company to have "financial consultancy" as its object, it is necessary to expressly exclude from it the investment advisory activities regulated in the Securities Market Law. [See more.](#)

5.6 CHANGE OF ADDRESS AND MODIFICATION OF THE OBJECTS OF THE COMPANY.

Resolution of 26th February 2019, of the Directorate General of Registries and Notaries, in the appeal filed against the qualification note issued by the commercial registrar II of Alicante, rejecting the registration of corporate agreements of change of registered office and modification of the object.

Summary: The company submits the resolution for public presentation adopted to redraft the statutory article relating to the object of the company. After the change of corporate purpose, the company is no longer engaged in the sale of vehicles and therefore, in the opinion of the Registrar and the DGRN, the use of the English noun "car" in its name leads to error.

For that reason, the Registrar rejects the registration and the DGRN confirms the qualification note of the Registrar. [See more.](#)

5.7 LEGALIZATION OF MINUTES LEDGERS. JUSTIFICATION OF FULL USE OF THE PREVIOUS ONE. TRANSITORY RIGHT.

Resolution of 21 February 2019, of the Directorate General of Registries and Notaries, in the appeal filed against the qualification note issued by the Commercial Registrar IV of Madrid, rejecting the legalisation of the minutes book of a company corresponding to fiscal year 2017.

Summary: A company, in accordance with the provisions of Law 14/2013 on Support for Entrepreneurs and their Internationalisation, requests the legalisation of a book of minutes of a company corresponding to the financial year 2017 electronically.

The Registrar revokes the legalization of the book dictating that "A new corporate book (of minutes; partners; nominative shares; contracts of the sole partner) may not be legalized until the full use of the previous one is accredited. This circumstance shall be recorded in the first telematic dispatch of books of this kind by means of certification of the administrative body incorporated in the dispatch as an attached file (Instruction DGRN 12/02/15, rule 6. a)".

For the correction of the defect, the company provides a certificate from which it results that the previously legalized book was legalized on May 11th, 1999 and was closed on July 20th, 2017.

The Registrar detects a second defect in the closing date.

The DGRN confirms the qualification of the Registrar by invoking article 18.1 of Law 14/2013 of 27th September and in accordance with the content of the sixth rule of the Instruction of this Directorate General of Registries and Notaries dated 12th February 2015. He points out that the Registrar qualifies negatively in a correct manner since *"to carry out the legalization, to accredit the complete use of the previous one by means of certification of the administrative body who contributes it stating that the previous book legalized on May 11, 1999 was closed on July 20, 2017"*. [See more.](#)

6. Other Regulations

6.1 Order ECE/228/2019 of 28th February on basic payment accounts, procedure for transferring payment accounts and requirements for comparison websites. [See more.](#)

6.2 Order TEC/271/2019 of 6th March establishing the territorial supplements in the Autonomous Communities of Andalusia, Aragon, Principality of Asturias, Cantabria, Castile and Leon, Catalonia, Extremadura, Galicia, Madrid, the Region of Murcia and Navarre in relation to electricity access tolls for 2013 and establishing the procedure for settling the territorial supplements. [See more.](#)

6.3 Order TEC/351/2019, of 18th March, approving the National Air Quality Index. [See more.](#)

6.4 Order TEC/332/2019, of 20th March, establishing the obligations to contribute to the National Energy Efficiency Fund in 2019. [See more.](#)

6.5 Order TMS/368/2019, of 28th March, implementing Royal Decree 694/2017, of 3rd July, implementing Law 30/2015, of 9th September, regulating the Vocational Training System for Employment in the work field, in relation to the training offer of the competent administrations and its financing, and establishing the regulatory bases for the granting of public subsidies for its financing. [See more.](#)

6.6 Order TMS/369/2019, of 28th March, regulating the State Register of Training Entities of the vocational training system for employment in the workplace, as well as the common processes of accreditation and registration of training entities to provide training specialities included in the Catalogue of Training Specialities. [See more.](#)

6.7 Decree 2/2019, of 4th March, of the President of the Generalitat, on the dissolution of Les Corts and the calling of elections to it. [Ver más.](#)

6.8 Circular 1/2019, of 7th March, of the Spanish Data Protection Agency, on the processing of personal data relating to political opinions and the sending of electoral propaganda by electronic means or messaging systems by political parties, federations, coalitions and groups of voters under article 58 bis of Organic Law 5/1985, of 19th June, of the General Electoral System. [See more.](#)

The foregoing comments contain informative aspects and do not constitute professional or legal advice, not necessarily including the opinion of the authors.

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