



Corporate-commercial measures introduced by the “Creation and Growth” Law

Legal Alert



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29 September 2022 saw the publication in the Official State Gazette of [Law 18/2022 of 28 September 2022, for the creation and growth of companies \(hereinafter “Law 18/2022”, the “Law” or the “Creation and Growth” Law\)](#).

The new Law, adopted within the framework of part 13 (“Fostering the growth of SMEs”) of the Spanish Recovery, Transformation and Resilience Plan and considered to be one of its most significant reforms, sets out, among other things, to facilitate the creation of start-ups while lowering any regulatory or financial barriers to business growth, with a view to boosting competition for the benefit of consumers and enhancing the productive fabric.

Save for the exceptions described below, the Law is set to enter into force 20 days following publication, i.e. **on 19 October 2022**:

- (i) the legal regime governing **participatory financing platforms, which will be effective as of 10 November 2022**; and
- (ii) the legal regime relating to **electronic invoicing between traders and professionals, which will enter into force** within one or two years of the adoption of the implementing regulations, depending on certain circumstances.

The measures adopted under the sweeping Creation and Growth Law affect various areas:

- **Corporate** measures, to expedite the creation of start-ups;
- **Tax and commercial** measures, rendering electronic invoicing compulsory;
- **Financial** measures, to support business growth, while driving and improving collective investment and venture capital; and
- **Economic and commercial** measures, to improve the regulation of, and eliminate obstacles to, economic activities, and to combat late payment or default in commercial transactions.

This document sets out the main **corporate** measures to be implemented:

AMENDMENT OF THE SPANISH COMPANIES ACT

Article 2 of the Creation and Growth Law amends the [Revised Spanish Companies Act approved by Royal Legislative Decree 1/2010 of 2 July 2010](#) (LSC per its Spanish acronym) in respect of the following matters:

- **Reduction of the minimum share capital of limited liability companies (SRLs)**

- The **minimum share capital** of an SRL (article 4 of the LSC) **may not be lower than Euro 1**.

Provided that the capital of the SRL is lower than Euros 3,000, the following rules will be applied to safeguard the interests of creditors:

- (i) 20% or more of profits must be appropriated to the legal reserve until the combined amount of that reserve and the share capital reaches Euros 3,000; and
 - (ii) In the event that the company is wound up on a voluntary or compulsory basis and its equity is insufficient to cover the settlement of its corporate obligations, the shareholders will be jointly and severally liable for the difference between Euros 3,000 and the amount of the subscribed capital.
- Any notaries or other intermediaries participating in the creation of SRLs must inform the companies’ founders of the advantages of using Entrepreneur Service Points (PAEs) and the Company Information Centre and Creation Network (CIRCE) in respect of both their incorporation and the performance of other formalities connected with the commencement of the companies’ operations (article 3 of the Law).

In this vein, additional provisions five and six of the Law provide as follows:

- o The Ministry of Justice **will regulate, by means of an Order, the deed of incorporation of SRLs**, using a standard format and coded fields, thus enabling SRLS to be incorporated using the Single Electronic Document (DUE) and to adopt a board of directors-based management system.
- o As regards the **incorporation of SRLs exclusively by online means, the relevant notarial formalities will be included in the incorporation procedure by means of CIRCE**. In this case, it will be subject to the time limits, tariffs and other requirements provided for in the CIRCE regulations.

The regulatory changes required to incorporate these formalities (relating to the Single Electronic Document, standard articles of association and standard public deed) will be implemented by Royal Decree.

- **Elimination of limited liability companies incorporated in two stages**

Article 4 bis of the LSC, relating to limited liability companies incorporated in two stages, has been **deleted**, as has article 5.2 of the LSC, relating to SRLs subject to the two-stage incorporation regime.

SRLs which, **prior to 19 October 2022** -when the Creation and Growth Law is set to enter into force-, had been subject to article 4 bis of the LSC, may provisionally **opt** to amend their articles of association so that they are no longer subject to the two-stage incorporation regime, provided that their share capital amounts to less than Euros 3,000, under the rules set forth in article 4.3 of the LSC (transitional provision two of the Law).

Companies that do not amend their articles of association and whose share capital falls below the above figure will be subject to the following **rules**:

- a) 20% or more (without an upper limit) of profits for the year must be appropriated to the legal reserve.
- b) Once the allocations provided by law or the articles of association have been made, dividends may only be distributed

to shareholders if equity does not fall below Euros 1,800 either before, or as a result of, the distribution.

- c) The total annual remuneration paid to shareholders, and to directors for discharging their duties as such, must not exceed 20% of equity for the year concerned, notwithstanding any remuneration to which they may be entitled as a company employee or for providing professional services that the company itself engages from them.
- d) In the event that the company is wound up on a voluntary or compulsory basis and its equity is insufficient to cover the settlement of its corporate obligations, the company’s shareholders and directors shall be jointly and severally liable for payment of the amount of the share capital plus the difference between this amount and Euros 3,000.

As regards the **content** of the **articles of association** (article 23 of the LSC), the reference to SRLs incorporated on a two-stage basis has been deleted from section d).

- **Elimination of simplified-form limited liability companies**

Title XII and additional provisions four, five and six of the LSC, relating to simplified-form limited liability companies, have been **repealed**.

Simplified-form limited liability companies **existing at 19 October 2022** -the date on which the Law is set to enter into force- will temporarily be governed by the provisions regulating ordinary limited liability companies and will be referred to as SRLs (transitional provision three of the Law).

ELECTRONIC NOTARIAL AGENDA

Pursuant to article 4 of the Creation and Growth Law, **all notaries** must be available on this electronic agenda and in a position to **incorporate companies via CIRCE**.

Notaries are not permitted to reject any incorporation process initiated via the **CIRCE system** or the **DUE**. Where there is just cause for rejection, the CIRCE and the General Council of the Spanish Notarial Profession

must be notified accordingly, via the duly authenticated means used to send the request to the notary.

Companies may nevertheless be incorporated using the **extrajudicial foreign public document**, in accordance with legislation relating to international legal cooperation. Such documents may be registered at Spanish public registries if they meet the requirements laid down in mortgage law and international legal cooperation legislation.

Additional provisions three and four of the Law state that the Ministry of Industry, Commerce and Tourism will prepare, on a **quarterly basis**:

- a **list** specifying, **for each notary**, the number of appointments received through the Electronic Notarial Agenda, the number of appointments rejected and the number of notarised copies of deeds of incorporation sent to the Mercantile Registry via CIRCE; and
- **statistics** on the use of CIRCE and the amount of time taken to incorporate a company using this system, broken down by procedure.

SUPPORT FOR AND THE INTERNATIONALISATION OF ENTREPRENEURS

Several provisions of [Law 14/2013 of 27 September 2013, on support for and the internalisation of entrepreneurs](#) have been amended, the most salient aspects of which are as follows:

- Limited Liability Entrepreneurs may benefit from the limitation of liability with respect to the debtor’s **habitual abode**, provided that its value does not exceed Euros 300,000¹ (as valued for transfer tax and stamp duty purposes), and **capital equipment used in productive operations**, and any such other equipment as may replace it, as duly identified on the Personal Property Register, up to the limit of the aggregate turnover for the preceding two years.
- The **founders of an SRL** may **opt to incorporate companies using a standard format public deed, with or without standard articles of association**, as detailed in articles 15 and 16 of Law 14/2013.

¹ In the case of residential properties located in a town with more than 1,000,000 inhabitants, this figure shall be multiplied by 1.5%.

- Natural persons and legal entities are now able to perform all the administrative procedures required in order to wind up the activities of sole proprietorships and trading companies, pursuant to article 22 of Law 14/2013.

OTHER NEW CORPORATE DEVELOPMENTS

Additional provisions eight, nine, ten and twelve of the Creation and Growth Law contain other interesting developments:

- **Civil partnerships without commercial form**

Civil partnerships without commercial form incorporated in accordance with the relevant generally applicable, regional or special law **may be registered at the Mercantile Registry**. The initial entry on the Register must contain certain information specified in additional provision eight of the Law.

- **Creation of social economy entities via CIRCE**

Within the framework of the Council for the Promotion of the Social Economy, the Law will **further** the implementation of **technological developments** that will enable **cooperatives and worker-owned limited liability companies** to be incorporated under [Royal Decree 44/2015 of 2 February 2015](#), regulating the specifications and conditions for use of the DUE for the start-up of cooperative entities, civil partnerships, joint property entities, limited liability worker-owned entities and limited liability entrepreneurs, via the electronic processing system.

- **Recognition of Common Interest and Benefit Companies**

Common Interest and Benefit Companies have been recognised as **companies** which voluntarily decide to include the following in their articles of association:

- Their explicit commitment to the creation of a positive social and environmental impact through their activities.

- Their subjection to higher levels of transparency and accountability in the pursuit of the aforementioned social and environmental objectives, and consideration of the relevant stakeholders when making decisions.

- **Mercantile Registry information**

Within a maximum period of six months of the entry into force of the Creation and Growth Law, an interministerial working group will be created to analyse the **measures necessary to ensure that the information on record at the Mercantile Registry is provided in an open format** so that it can be downloaded and easily processed.

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