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The Entrepreneur Act

On 28 September 2013, the Official Gazette of the Spanish State published Act 14/2013, 27 September, in support of entrepreneurs and their internationalisation (hereinafter, the "Entrepreneur Act").

The Entrepreneur Act is born of the objective to support the entrepreneurial activity in Spain and in doing so introduces a broad range of reforms on corporate, tax, labour and legal-administrative novelties, among others.

The following are the main commercial and tax novelties established by the Entrepreneur Act.

Limited liability entrepreneur

The figure of the "Limited Liability Entrepreneur" is created, whose status enables the limitation of the liability and action of the creditor arising from business or professional debts, making it therefore unable to reach the main residence of the debtor providing that the value of the property does not exceed three hundred thousand Euros (€ 300,000).

The benefit of the limitation to liability in relation to debts incurred may be lost by the individual entrepreneur if, within seven (7) months of the closing of the corporate year, he fails to deposit the annual accounts in the Mercantile Registry.

In such case, the individual entrepreneur will be liable for any debts incurred subsequently to the seven (7) months of the closing of the corporate year and up to the moment of their deposit.

Limited liability entrepreneur status should be recorded in the Mercantile Registry that corresponds to the registered office of the entrepreneur.

The successive formation company

With the entry into force of the Entrepreneur Act, limited liability companies may be incorporated with a share capital figure below the legal minimum. An Article 4 Bis is added to the Capital Companies Act ("LSC") to regulate this figure.

Until the minimum share capital figure is reached, such company will be subject to the successive formation scheme. Furthermore, until the minimum share capital figure is attained, in other words, three thousand Euros (€ 3,000), a figure of at least 20 per cent of the profit for the year should be allocated to the legal reserve with no limit to the quantity thereof.

Likewise, dividends may solely be distributed among shareholders once all legal and statutory reserves have been covered, if the net worth of the company is not or, as a result of the distribution, falls below sixty per cent (60%) of the minimum legal capital.

The annual sum of compensation to shareholders and directors for the holding of such posts during those years may not exceed 20 per cent of the net worth from the corresponding year.

In the event of winding up, whether voluntary or compulsory, if the net worth of the company is insufficient to cover the payment of its obligations, the shareholders and directors of the company will be jointly and severally liable for the payment of the minimum capital figure established by Law.

It will not be necessary to accredit the reality of monetary contributions by shareholders in the incorporation of limited liability companies of successive formation. Nevertheless, founders and those who acquire any of the equity shares assumed in the incorporation will be jointly and severally liable before the company and before any corporate creditors for the reality of the contributions.

Additionally, Article 23 LSC is amended to determine that when the capital figure is below the minimum established, the by-laws will contain an express statement regarding the subjection of the company to such scheme.

Start of the entrepreneurial activity

In order to favour the start of the entrepreneurial activity, a series of offices known as "Entrepreneur Assistance Points" ("PAE") are created, that will be on-line or on-site points of single contact in which all formalities necessary for the start-up, performance and termination of entrepreneurial activities may be undertaken.

A procedure is facilitated for the urgent incorporation of limited liability companies by entrepreneurs, by means of the presentation thereof before the PAE.

Powers of attorney and their revocations, granted by directors or legal agents of commercial undertakings or by limited liability entrepreneurs may also be granted in an electronic document, providing that the power of attorney document is signed with the recognised electronic signature of the principal.

The circumstances that companies must fulfill to prepare the abridged balance sheet and statement of changes in net worth are likewise modified. To this regard, following the entry into force of the Entrepreneur Act, those companies that at the closing of two consecutive financial years fulfill two of the following circumstances may prepare an abridged balance sheet and statement of changes in net worth: (i) the total of asset entries does not exceed four million Euros (€ 4,000,000) instead of the two million eight hundred fifty thousand Euros (€ 2,850,000) established previously; (ii) the net amount of its annual turnover does not exceed eight million Euros (€ 8,000,000) instead of the five million seven hundred thousand Euros (€ 5,700,000) established previously; and (iii) the average number of workers employed during the year is not greater than fifty (50).

Nevertheless, in spite of the preceding modification, the circumstances to be considered for the audit obligation remain unchanged, whereby those companies that for two consecutive financial years, at the closing date of each one, fulfill at least two of the following conditions will still not be obligated to audit their accounts: (i) the total of asset items does not exceed two million eight hundred fifty thousand Euros (€ 2,850,000); (ii) the net amount of its annual turnover does not exceed five million seven hundred thousand Euros (€ 5,700,000); and (iii) the average number of workers employed during the year is not greater than fifty (50).

Out-of-court payment agreement

The Entrepreneur Act adds a new heading X to Insolvency Act 22/2003, 9 July (hereinafter, the “Insolvency Act”) which regulates a procedure by means of which the debtor may reach an out-of-court agreement for payment with creditors.

The new regulation limits this procedure to (i) individual debtors whose liabilities do not exceed five million Euros (€ 5,000,000) and (ii) legal entities that, should they be declared insolvent, such insolvency is not particularly complex pursuant to the terms set forth in Article 190 of the Insolvency Act, in other words, that the debtor has less than fifty (50) creditors, and its

assets and liabilities are not greater than five million Euros (€ 5,000,000).

This out-of-court procedure commences with the request by the debtor for the appointment of an insolvency mediator before the corresponding Notary or Mercantile Registry, together with an inventory of goods and rights, a list of creditors indicating the quantity and maturity dates of the respective credits, list of any agreements in force, forecast monthly income and expenses and an indication of its cash and liquid assets.

The main consequences of the start of the procedure from the viewpoint of the debtor are: that it may not be declared insolvent at the request of legitimate third parties and that it will be prohibited from using electronic means of payment and will be required to return all credit cards to the entities that have issued them.

The creditor, at the start of the procedure, will be prevented from starting or continuing with enforcements on the net worth of the debtor throughout the negotiations for the out-of-court agreement, up to a maximum period of three (3) months, and will be prohibited from filing notes of attachment subsequently to the request for the appointment of an insolvency mediator. Notwithstanding the foregoing, the initiation of this out-of-court procedure will not affect (i) those holders of in rem guarantee credits, in which case the start or continuation of enforcement will depend upon the decision of the creditor, and (ii) any public law proceedings followed by creditors.

The insolvency mediator will call the creditors appearing on the list attached to the request so that a payment plan may be approved for all pending credits, which may not include a debt relief greater than twenty-five per cent (25%) and/or a moratorium greater than three (3) years.

The payment plan will be deemed as approved with the vote in favour by creditors holding at least sixty per cent (60%) of the liabilities. If the payment plan consists of the assignment of debtor assets in payment of the debts, such plan should have the approval of creditors representing seventy-five per cent (75%) of the liabilities and of the creditor or creditors that, where appropriate, have an in rem guarantee on these assets.

The approval of the plan will determine the clearance or deferral of the debt in accordance with any debt relief or moratoriums agreed or, in the event of the assignment in payment of assets, the discharge of the credits.

If the plan is not accepted and the debtor continues to be insolvent, or if the out-of-court payment agreement is breached, the insolvency mediator should seek insolvency, with such insolvency to be deemed as consecutive insolvency.

The main tax novelties introduced by Act 14/2013 relative to Corporate Income Tax, Personal Income Tax and Value Added Tax are the following.

Corporate Income Tax

- **Deduction for investment of profits**

This tax benefit will be applicable by those entities that fulfill the requirements of the Small-Sized Enterprise tax regime (net turnover figure less than € 10 million).

Those entities may make a 10% reduction (5% in the event of the application of the reduced tax rate for the maintenance or creation of employment) of any profits obtained that are invested in new tangible fixed assets or real estate investments subject to economic activities, in the tax liability during the tax period in which the investment takes place. This deduction is incompatible with depreciation freedom.

The net worth elements covered by the investment should remain operative in the net worth of the entity for a period of 5 years, or throughout their service life if it were shorter.

- **Deductions for R+D and technological innovation**

Deductions for R+D and technological innovation activities generated during tax periods beginning as of 1 January 2013 may optionally be excluded from the limit established in legislation applicable to deductions to promote the undertaking of certain activities (Chapter IV of the IS Act), waiving 20% of the amount of the deduction

generated, with a maximum joint limit (R+D and technological innovation) of € 3 million per annum.

The amount of the deduction applied or paid for technological innovation activities may not surpass the amount of € 1 million per annum.

In those cases in which it cannot be applied due to insufficient tax liability, the refund thereof may be requested.

The application of the aforementioned incentives is conditioned upon the maintenance of the R+D and/or technological innovation activities and average workforce.

- **Tax incentives for the surrender of intangible assets ("Patent Box")**

As of the entry into force of the Entrepreneur Act, the tax regime applicable to income from the surrender of certain intangible assets is amended in terms of the following aspects:

- The 50% reduction applicable to income derived from the surrender of certain intangible assets is replaced by the inclusion in the taxable base of 40% of the income derived from the surrender of their use or operation.

- The assignor entity may apply the incentive at a minimum of 25% of their cost if it had created the surrender intangible assets.

- Prior assessments agreements in relation to income and prior assets classification agreements can be optionally requested to the Tax Authorities.

- The transitory tax regime provides that intangible assets surrenders made prior to the entry into force of this Act will continue to abide by the provisions of the prior wording of Article 23 TRLIS.

- **Deduction for the creation of employment for disabled workers**

As of 1 January 2013, different amounts are established according to the degree of disability of the person recruited, and the obligation of the open-ended employment contract is eliminated.

The deduction in the total tax liability will be made for each person/year of increase of the average workforce of disabled workers occurring during the tax period with respect to the average workforce of the same type of workers during the immediately preceding period in the amounts of:

  - € 9,000 if the worker has a degree of disability equal to or greater than 33 per cent and less than 65 per cent; and

  - € 12,000 if the worker has a degree of disability equal to or greater than 65 per cent.

Workers hired with the right to this deduction will not be counted for the purpose of the application of depreciation freedom with employment creation.

Personal Income Tax (IRPF)

- **Tax incentives for investment in new entities**

As of 29 September 2013, the tax benefits introduced in the IRPF (of the Spanish Personal Income Tax) for investments made in new or recently-created companies include:

- 20% deduction in the State IRPF tax liability, of the investment made in the subscription of shares or equity shares. The maximum deduction base will be € 50,000 per annum and will be comprised of the purchase value of the shares or equity shares subscribed.

- Total exemption from any capital gains generated in the subsequent disinvestment, providing that it is reinvested in another new or recently-created company.

To make the deduction it will be necessary to obtain a certificate issued by the entity whose shares or equity shares have been acquired, indicating compliance with the following requirements: (i) Must be a Corporation, Limited Liability Company, Labour Corporation or Labour Limited Company; (ii) To exercise an economic activity that has the personal and material means necessary for the development thereof. Its activity may not be the management of material or real estate assets, and (iii) the equity of the entity may not exceed € 400,000 at the beginning of the tax period in which the taxpayer acquires the shares or equity shares.

- **IRPF specialities for the application of the new deduction for profit investment**

Effective as of 1 January 2013, the following specialities are established for application in IRPF:

- The deduction will be applied to taxpayers that determine earnings by direct estimation in any of its forms. Nevertheless, in the case of taxpayers that determine net earnings by the objective estimation method, this may be applied when established by Regulation.

- They will provide the right to the deduction of net earnings from economic activities that are invested in new tangible asset or real estate investments subject to economic activities carried out by the taxpayer.

- The deduction base will be the quantity equivalent to the part of the general positive tax base of the tax period corresponding to the economic activities net earnings invested .

- The deduction percentage will be 10%. Nevertheless, it will be 5% when the taxpayer had applied the 20% activity beginning reduction or the maintenance or employment creation reduction , or in the case of earnings obtained in Ceuta and Melilla.

- The amount of the deduction may not exceed the sum of the State and Autonomous Region tax liability.

In any event, the requirements established for small enterprises (net turnover figure during the immediately preceding tax period lower than € 10 million) should be fulfilled.

Value Added Tax

- **Special Tax regime of cash-basis**

Effective as of 1 January 2014 the special VAT cash-basis regime can be applied.

In order to opt for this special tax regime it would be required:

- A trading volume lower than € 2,000,000 during the preceding calendar year. The trading volume amount should be increased on an annual basis if the taxpayer initiated its economic activities during the previous calendar year.

  Nevertheless, the tax regime may be applied during the current calendar year in which the taxpayer begins its economic activities.

- Tax payers whose collections in cash, with respect to one same recipient in the course of the calendar year, exceed the quantity determined by VAT Regulations will be excluded.

Application for the tax regime will be established by Regulations for those taxpayers fulfilling the requirements. Annually the tax regime would be automatically extended except for waiver or exclusion.

Waiver or exclusion from the tax regime imply that its rules will be applicable with respect to transactions undertaken during its validity. The minimum validity of the waiver will be 3 years.

This special tax regime will be applicable to all transactions carried out in the Spanish VAT territory.

However, it will not be applicable to the following transactions:

- Those subject to other special VAT regimes.
- Exportations and inter-community deliveries of goods (transactions that are exempt under Articles 21, 22, 23 and 24 of the Spanish VAT Act).
- Intra-community acquisitions of goods.
- Those in which the reverse charge rule applies:
    - Importations and transactions treated as importations for VAT purposes.
    - Self-consumptions of goods and services.

VAT accrual will take place upon the total or partial collection of the price for the amounts actually collected, or on 31 December of the year immediately following the one in which the transaction took place, if the collection has not taken place.

VAT charge should be made upon the invoice issue and delivery, but it will be understood to take place upon the accrual of the transaction.

Taxpayers that opt to apply the tax regime may deduct input VAT amounts in accordance with the general regime for deductions envisaged in the VAT Act, with the special feature that the deduction right will arise: at the moment of the total or partial payment of the price for amounts actually paid, or on 31 December of the year immediately after the one in which the transaction took place, if the price had not been paid.

The deduction right will be exercised in the tax return corresponding to the period in which the right of deduction had arisen, providing that the 4-year period to consider the deduction right lapsed, had not passed.

VAT taxpayers that are not under the tax regime, but they are recipients of transactions included in the tax regime will be entitled to deduct VAT as of the moment of the total or partial payment of the price for the amounts actually paid, or on 31 December of the year immediately after the one in which the transaction occurred, when such payment has not taken place.

The transactions affected by the tax regime will be included in the input VAT book at the moment in which VAT would be deductible.

The tax regime's effects for VAT tax base modification purposes are the following:

- With regard to irrecoverable credits, we must point out that VAT tax base modification made by a taxpayer not included in the tax regime, as a result of credits that are totally or partially irrecoverable, will determine the entitlement to deduct the input VAT amounts corresponding to the modified transactions, and that were still pending deduction at the date of the modification by the taxpayer under such regime.
- With regard to the bankruptcy declaration, the tax regimen taxpayer or the recipients bankruptcy declaration, will determine, on the date of the bankruptcy declaration, the accrual of any output VAT and the deduction of any taxes paid with respect to the transactions to which this tax regime was applied, that were still pending accrual or deduction.

Canary Islands General Indirect Tax

Effective as of 1 January 2014, the Special cash-basis accounting tax regime is introduced in terms similar to those indicated for the Value Added Tax.

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Draft Regulation of Act 10/2010 on the prevention of money laundering and the funding of terrorism

In this article we will provide a summarized commentary on the main aspects of the draft Regulation of Act 10/2010, 28 April, on the prevention of money laundering and funding of terrorism, currently in the public hearing stage.

Subjects excluded

Excluded from the application of Act 10/2010 are those reporting parties whose activity is the exchange of foreign currency performed in hotel establishments under certain requirements and the notarial or registration acts, determined by order, because they lack capital-related economic content and are not relevant in this area.

In addition, those reporting parties with less than 10 persons and whose annual turnover or annual general balance sheet does not surpass € 2 million are also excluded from some of the obligations established in Act 10/2010 and its regulation, providing they do not form part of a business group.

Due diligence measures

By means of certified documentation, reporting parties will identify and verify the identity of the individuals and legal entities that seek to establish business relations or take part in transactions whose amount is equal to our greater than € 1,000, with the exception of transfers and cash deliveries and when no doubts exist as to the identity of the participating party.

Likewise the beneficial owner will be identified and appropriate measures will be adopted on the basis of the risk in order to verify its identify prior to the establishment of business relations, the execution of electronic transfers in an amount greater than € 1,000 or the execution of other occasional transactions in an amount greater than € 15,000.

With regard to English figure of the trust, reporting parties will identify and adopt appropriate measures in order to verify the identity of the settler, the trustees, the protector, the beneficiaries and any other individual that exercises the effective ultimate control of the trust, even by means of a change of control or ownership.

Additionally reporting parties may apply, on the basis of the risk, simplified due diligence measures with respect to given types of clients and products or transactions or, to the contrary, reinforced due diligence measures in the case of business relations and transactions that pose a greater risk of money laundering or the funding of terrorism.

Finally, the reporting parties will keep close scrutiny over transactions made throughout the business relation, increasing such scrutiny when above-average risks appear.

Communication and preservation of due diligence documents

On the basis of the risk, internal control procedures will determine appropriate alerts by type, participants and amount of the transactions. In the case of reporting parties whose annual number of transactions exceeds 10,000, the implementation of automated forms for the generation and prioritization of alerts will be mandatory.

Reporting parties will conduct a systematic monthly notice to the Execution Service of the Commission when transactions take place involving movements of money in cash, transfers, checks or other bearer documents (unless these are for credit or debit in the account of a client), in an amount greater than € 30,000 or its counter-value in foreign currency.

Likewise, reporting parties will preserve the certified formal identification documentation, client statements, contractual documentation, etc. for a period of 10 years of the termination of the business or contractual relationship, on optical, magnetic or electronic mediums.

This obligation does not include those reporting parties that, including agents, employ less than 10 persons and whose annual turnover or annual general balance sheet does not surpass € 2 million, which may chose to maintain physical copies of identification documents. This exception will not be applicable to reporting parties that form part of a business group that exceeds such figures.

Internal control procedures

The reporting parties will approve in writing and apply suitable procedures for the prevention of money laundering and funding of terrorism.

This obligation does not include those reporting parties that, including agents, employ less than 10 persons and whose annual turnover or annual general balance sheet does not surpass € 2 million. This exception will not be applicable to reporting parties that form part of a business group that exceeds such figures.

Risk report

Internal control procedures will be based on a prior risk analysis that will be documented by the reporting party, evaluating the risks by client type, countries or geographic areas, products, services, operations, etc., proceeding to document the aforementioned procedures in a manual for the prevention of money laundering and funding of terrorism.

This obligation does not include those reporting parties that, including agents, employ less than 10 persons and whose annual turnover or annual general balance sheet does not surpass € 2 million. This exception will not be applicable to reporting parties that form part of a business group that exceeds such figures.

Internal control bodies

Reporting parties will appoint a representative and alternate representative before the Executive Service for the Commission of Money Laundering (of the Spanish, SEPBLAC), responsible for compliance with the communication obligations established in Act 10/2010.

Notice to SEPBLAC of the appointment or termination of the representative will not be mandatory in the case of individual employers or professionals or of other reporting parties that, including agents, employ less than 10 persons and whose annual turnover or annual general balance sheet does not surpass € 2 million. This exception will not be applicable to reporting parties that form part of a business group that exceeds such figures.

Additionally, the establishment of an internal control body will not be mandatory in those reporting parties that, including agents, employ less than 50 persons and whose annual turnover or annual general balance sheet does not surpass € 10 million, in which case the representative before the Executive Service of the Commission will perform the duties thereof. This exception will not be applicable to reporting parties that form part of a business group that exceeds such figures.

At a business group level (with group understood according to the definition contained in Article 42 of the Spanish Code of Commerce), the same obligations of the reporting party will extend to any branches or subsidiaries thereof.

External review

The reports of the external expert will describe and assess the internal control measures of the reporting parties at a given reference date. Such reference date of the external expert report or, where appropriate, follow-up report, will be 30 June. The reports should in all cases be issued within 2 months of the reference date.

In the event of any deficiencies that may not be immediately resolved, the managerial boards of the reporting party will expressly adopt a remedial plan, that will establish a precise schedule for the implementation of any corrective measures. Such schedule may in no case exceed one calendar year.

Likewise the external review obligation will not be required of individual employers or professionals or of other reporting parties that, including agents, employ less than 10 persons and whose annual turnover or annual general balance sheet does not surpass € 2 million. This

exception will not be applicable to reporting parties that form part of a business group that exceeds such figures.

Training

The reporting parties will approve an annual training program on the subject of the prevention of money laundering and funding of terrorism.

This obligation does not include those reporting parties that, including agents, employ less than 10 persons and whose annual turnover or annual general balance sheet does not surpass € 2 million. This exception will not be applicable to reporting parties that form part of a business group that exceeds such figures.

Those reporting parties for which the approval of an annual training plan is not mandatory, should accredit that the representative before the Executive Service of the Commission has received suitable external training for the exercise of his duties.

Recent case law and Resolutions from the Directorate General of Registries and Notaries

The Supreme Court endorses the termination of the sale and purchase agreement for a dwelling in which the delay in delivery to the buyer led the bank institution to reject the mortgage subrogation due to the economic crisis.

Supreme Court, First Civil Chamber, Ruling 309/2013, 26 April

This extraordinary appeal deals with the termination of a real estate sale and purchase agreement by the buyer due to the fact that the delivery of the dwelling by the developer was delayed by over one year, leading the bank institution, as a result of the economic crisis that had begun by that time, to deny the buyers subrogation to the mortgage as set forth in the sale and purchase agreement.

In first instance the action was dismissed for termination of the sale and purchase agreement for breach of the obligations of the seller based on the delivery date and non-subrogation of the mortgage offered to the buyer, who also sought the return of all quantities that had been paid toward the price.

The seller company objected to the claim and likewise filed a counter-claim in which it sought the fulfilment of the agreement, with the payment of the price and execution of the public deed.

In second instance, the Provincial Appellate Court likewise dismissed the claim of the buyer and partially allowed the counter-claim.

The Supreme Court, coinciding with the appellant that the economic crisis is a well-known fact that does not require proof, considers that it had a series of consequences in the legal scope, particularly in the granting of mortgage loans and in the acceptance of subrogations that had previously been granted and, considering furthermore in this specific case that the deadline was an essential condition, since it coincided with the start of the aforementioned economic crisis that prevented the aforementioned subrogation by the buyer to the mortgage-backed loan.

Lastly, the Supreme Court declares that by associating the breach of the deadline with the mortgage subrogation, the buyer party was left without the material ability to acquire the property from the developer, whereby declaring the private sale and purchase agreement as discharged under the aegis of case law of the Court in similar cases, as well as on the doctrine that allows the discharge of the legal transaction if the subject thereof ceases to exist.

Validity of the agreement of the partial spin-off of the insolvent company when the appropriate formalities and procedures have been carried out for approval thereof and means for payment of the debt exist for the creditors.

Provincial Appellate Court of Saragossa (Section Five), Ruling 217/2013, 19 April

The commercial court upheld the action for cancellation filed by the bankruptcy administration against the bankrupt company, declaring that the partial spin-off of the company was detrimental for bankruptcy creditors, as a gratuitous act, and therefore constituting creditor fraud.

In second instance, the Provincial Appellate Court of Zaragoza revoked the ruling, dismissing the claim by understanding that all of the deadlines had elapsed as indicated for challenging the structural modification by means of the nullity or grounds for annulment of the resolutions adopted and, likewise, the resolution had been approved and entered in the Mercantile Registry without the exercise of any right of opposition. The creditors, in spite of being aware of the partial spin-off project, its approval and registration, did not state any opposition whatsoever, whereby no liability exists for the beneficiary company for prior obligations.

The Court likewise considers that the right of opposition and termination to actions for nullity deny the subsidiarity requirement for Paulian action, since the creditor has specific remedies for protection of the credit.

On the other hand, according to the interpretation of the Court, the necessary occurrence of the requirements for the exercise of Paulian action should be emphasised: the consislium fraudis or purpose of fraud to the detriment of the credit, the undertaking of an act by virtue of which the asset is taken from the transferred equity, the existence of a prior credit in favour of the petitioner, and finally, the aforementioned subsidiarity of action.

Finally, and in application of Community Law, there is likewise a record of safeguarding the principle of conservation of the registered corporate transaction as a general rule, which only exceptionally causes invalidity but not for cases of termination for creditor fraud.

The company that appoints an auditor without being obligated to do so and enters this in the Mercantile Registry should submit an audit report for registration entry and deposit of the annual accounts.

Provincial Appellate Court of Salamanca, Ruling 148/2013, 9 April

The Commercial Court dismissed the claim for challenge of the registration rating that rejected the entry and deposit of the annual accounts of a business corporation for failure to furnish the corresponding audit report, having previously entered the appointment of the auditor by the General Shareholders Meeting in the Mercantile Registry.

As in first instance, the Provincial Appellate Court deemed that, while the company was not obligated to audit its annual accounts in accordance with the provisions of the Capital Companies Act, once the appointment is entered, the corresponding audit report is obligatory for deposit of the annual accounts.

Considering that this type of case is not regulated in the Capital Companies Act or in corporate legislation, the Court chose to apply the criterion applied by the Directorate General of Registries and Notaries and the Spanish Accounting and Auditing Institute, establishing that when the General Meeting appoints an auditor, even when the company may submit an abridged balance sheet, the right of the shareholders who voted in favour should take priority, therefore making it obligatory as a resolution of the General Meeting and, likewise, considering that if an auditor of the company is entered it is logical to assume that such auditor will issue a report and that this will be attached to the annual accounts for their deposit in the Mercantile Registry for consultation by any interested party.

Further still, the Court establishes that the obligatory nature of submitting the audit report is even more obvious when considering that the auditing activity performs a public interest role, with this therefore understood as the existence of a broad group of persons and institutions that rely on the action of the auditor as a factor that supports proper market operation.

The ruling ends by concluding that, in addition to the fact that the company itself should have obliged the auditor to prepare the report of its accounting and financial statements for deposit together with the annual accounts in the

Mercantile Registry, the auditor should have reminded the company of the existence of the audit resolution and requested the information necessary for preparation of the report, under penalty of incurring a serious infraction envisaged in applicable legislation.

For more information

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