

The recent publication of Royal Decree 2/2021, of January 12, approving the Regulations for the development of Law 22/2015 on the Audit of Accounts, reinforces, in its Eleventh Additional Provision (D.A 11^a), the sanctioning regime in Article 283 of the Capital Companies Act, in the event a company fails to deposit its annual accounts in the Commercial Registry. It also defines the sanctioning procedure and the criteria for the imposition of penalties for non-compliance with the obligation to deposit the accounts.

Article 279 of the Capital Companies Act establishes the obligation of directors of companies to deposit in the Commercial Registry the annual accounts of the company, together with the certification of the resolutions of the shareholders' general meeting approving such accounts.

The main aspects of this new penalty regime are as follows:

1. The commercial registrars of the company failing to deposit the annual accounts are responsible for managing and processing any corresponding sanctioning proceedings.
2. The deadline for resolving and notifying the resolution of the sanctioning procedure is **six months** from the adoption of the agreement to initiate the procedure, without prejudice to the suspension of the same and the possible extension of such period in accordance with the applicable administrative legislation.
3. The criteria for establishing the amount of the sanction in the event of non-compliance are as follows:
 - a. The penalty will be 0.5 per thousand of the total amount of assets, plus 0.5 per thousand of the sales of the corporation included in the last tax return filed with the Tax Authorities (the **Last Tax Return**), which must be provided during the proceedings.
 - b. In case of failure to provide the Last Tax Return, the penalty shall be set at 2% of the equity capital according to the data recorded in the Commercial Registry.
 - c. In the event that the Last Tax Return is filed and the result of applying the aforementioned percentages to the sum of asset and sales entries is greater than 2% of the equity capital, the penalty will be determined by reducing the amount of the equity capital by 10%.

As established in Article 283.1 of the revised text of the Capital Companies Act, the financial penalty must be between €1,200 and €60,000 and, in the event that the company has an annual turnover of more than €6 million, the maximum limit of the fine for each year of delay will increase by €300,000.

Therefore, without prejudice to the previous obligation of companies to deposit their annual accounts in the Commercial Registry, this new regulation shows the legislator's interest in strict compliance with the obligation of companies' directors to comply with the obligation to deposit the annual accounts, as well as reinforces the obligation and the liability regime.

Contacts

Ramón Castilla

Partner

T +34 91 426 4848

E ramon.castilla@squirepb.com

Ana Vicente

Associate

T +34 91 520 0781

E ana.vicente@squirepb.com