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ROYAL DECREE-LAW TRANSPOSING DIRECTIVES ON TRADEMARKS

On 21st December, Royal Decree-Law 23/2018, of 21st December, on the transposition of directives on trademarks, rail transport and package travel and related travel services was published, which amends the current Law 17/2001, of 7th December, on Trademarks, to which it introduces significant changes. Without prejudice to future comments, the following paragraphs give a brief overview of the key features of the legislation and the different dates on which they take effect.

Coming into effect on 14th January 2019:

- Entitlement to apply for trademark registration: any natural or legal person may be the proprietor of a distinctive sign, irrespective of nationality, residence or establishment.
- Representation of distinctive signs: from now onwards, holograms, motion marks and multimedia marks can be protected as trademarks, which can be represented by any means as long as the protected object can be determined clearly and precisely.
- New text on absolute grounds for refusal in Article 5: protection has been strengthened for designations of origin and geographic indications, traditional wine terms, traditional specialities and plant varieties.
- Trademarks with reputation: the concept of 'notorious trademark' will no longer exist and, from now onwards, only the concept of 'trademark with reputation' will remain, which covers both of the previous categories. This also applies to the terms 'notorious trade name' and 'trade name with reputation'.

Coming into effect on the date on which the amendment to the Regulation implementing the Trademark 17/2001, of 7th December, is approved:

- Proof of use in the context of an opposition to a registration: this shall only take effect with respect to registration applications submitted after the effective date of the regulation that legally enacts the proof of use procedure.

Coming into effect on 14th January 2023:

- The Spanish Patent and Trademark Office (OEPM) shall take direct administrative responsibility for processing applications and declaring the invalidity and revocation of registered trademarks or trade names: the process that previously fell within the courts' jurisdiction is now assumed by the Spanish Patent and Trademark Office. The jurisdictional control of the rulings made in these proceedings is the duty of the Court for Contentious Administrative Proceedings of the High Courts of Justice, as stipulated in the Spanish organic and procedural legislation. Meanwhile, the institutions specializing in civil jurisdiction will still be responsible for settling disputes related to trademark violations and for hearing claims of invalidity and revocation lodged as counterclaims.

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REFORM OF THE COMMERCIAL CODE, CAPITAL COMPANIES ACT AND AUDIT ACT

On 28th December 2018, Law 11/2018 was passed, which amends the Commercial Code, the consolidated text of the Capital Companies Act, and the Audit Act 22/2015, of July 20th, as regards non-financial information and diversity.

The objective of this Law is to enact the transposition into Spanish Law of Directive 2014/95/EU of the European Parliament and the European Council, of 22nd October 2014, which amends Directive 2013/34/EU, as regards disclosure of non-financial and diversity information by certain large undertakings.

The main change introduced by Law 11/2018 is the reform to Article 348 bis of the Capital Companies Act in relation to the members' right of withdrawal in the absence of sufficient distribution of dividends, which applies to General Assemblies held as of the day on which the Law comes into force, 30th December 2018.

The new text relaxes the conditions required to justify the withdrawal of members to prevent putting the financial stability of the company at risk. To this end, the express possibility of agreeing statutory provisions is permitted to modify or eliminate this grounds for withdrawal from the company.

It also reduces the minimum percentage required of profits to be distributed, down to twenty-five percent of the previous year's profits, which can legally be distributed on the condition that profits have been made in the preceding three financial years.

Lastly, this grounds for withdrawal is subordinated to a systematic action by the company as it enables the possibility of meeting this percentage requirement with a weighted average of the last five financial years.

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03 JUDGMENT OF THE EUROPEAN COMMISSION AGAINST THE 720 DECLARATION FORM REGULATIONS

In December, the European Commission's judgment of 15th February 2017 was published, stating that it considers that the regulations on the obligation to declare overseas assets and rights and the accompanying penalty regime, with proportional penalties equivalent to 150%, breach a number of rights and freedoms enshrined in the Treaty on European Union: free movement of people and workers, freedom of establishment, freedom to provide services and free movement of capital.

Moreover, it criticises the attack on constitutional principles of legal certainty, effective judicial protection and economic capacity posed by the disproportionate nature of the penalties stipulated.

Although this judgment does not have any immediate consequences by any means, it presumably gives us an indication of how the Court of Justice of the European Union may rule in the future.

04 URBAN RENTAL ACT

On 24th January, the Official State Gazette published the Resolution of the Congress of Deputies of 22nd January 2019, which repealed Royal Decree-Law 21/2018, of 14th December, on urgent measures on housing and renting, which came into force on 19th December 2018, having not been validated by the Congress of Deputies in the session held on 22nd January 2019. The repeal means that all rental contracts signed before 19th December 2018 and after 24th January 2019 are regulated by the Urban Rental Act 29/1994, which precedes the aforementioned decree.

In contrast, contracts signed between 19th December 2018 and 24th January, the period in which the repealed decree was in force, are regulated by Royal Decree-Law 21/2018.

In addition, the Resolution also repeals all the amendments introduced by the aforementioned Royal Decree in the Horizontal Property Act, Civil Procedure Act, Local Tax Authority Regulation Act and the Law on Tax on Capital Transfers and Documented Legal Acts.

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PINTÓ RUIZ & DEL VALLE

The Association of National Olympic Committees (ANOC), with headquarters in Lausanne, has created an Ethics Commission and has appointed José Juan Pintó Sala as the President.

The Association of National Olympic Committees comprises the National Olympic Committees of all the countries.