

NEWSLETTER FEBRUARY 2016

STOCK MARKET

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On 30 December 2015, the BOE State Gazette published the Spanish Securities and Exchange Commission Circular 7/2015, of 22 December 2015, which amends Circular 5/2013, of 12 June 2015, which establishes the annual report models for the corporate governance of listed limited companies, savings banks and other institutions that issue stocks accepted for negotiation on official stock markets, and Circular 4/2013, of 12 June 2013, which establishes the annual report models regarding remunerations for directors of listed limited companies, board members and savings banks audit commissions that issue stocks accepted for negotiation on official stock markets. This Circular was created out of the need to harmonise annual report models for corporate governance with Law 31/2014, of 3 December 2014, which amended the Capital Companies Act, and with the new Good Governance Code for Listed Companies approved by the Spanish Securities and Exchange Commission in February 2015.

The main changes introduced by Circular 5/2013 are as follows: Section G of Appendix I contains the new recommendations of the Good Governance Code for Listed Companies; certain sections, which referred to old Unified Code recommendations that became mandatory following the approval and entry into effect of Law 31/2014, of 3 December 2014, have been deleted; and finally, Section C.2 of Appendices I and II has been amended to include information about the different committees that the institution has established in accordance with the Capital Companies Act and the articles of incorporation. Besides this, by virtue of the unique derogatory provision, Section B "Remunerations policy scheduled for future financial years" of Appendix I of Spanish Securities and Exchange Commission Circular 4/2013, of 12 June 2013, which establishes the annual report models regarding remunerations for directors of listed limited companies and the members of the board of directors and savings banks audit commissions that issue stocks accepted for negotiation on official stock markets, has been removed in order to adapt the annual report models regarding remunerations of listed limited companies to the text of Article 541 of the Capital Companies Act in the wording set out by Law 31/2014, of 3 December 2014, which does not contemplate including as minimum content of this report information on the remunerations policy scheduled for future years.

SPORTS

AMENDMENTS TO THE CAS CODE

The final amendments to the CAS Code came into effect on 1 January. We would first like to highlight that Article S14 relating to arbitrators and mediators has been amended and that from now on athletes committees will also be regarded as among the associations authorised to propose referees for CAS lists.

From a purely procedural point of view, the reform has introduced two significant changes. On the one hand, the new wording of Article R29, relating to the language of the procedure, allows the parties, providing that they cover the translation costs incurred, to hold the hearing in a language other than the official established one (English, French or the language agreed by the parties). On the other, Article R31 relating to communications and notifications has been amended. The parties will be able to submit their documents in advance by fax or by email (procedure@tas-cas.org), which is new, not forgetting that, as has occurred to date, these can also be sent via courier by the deadline or at most the next working day.

Article R36 has also been amended to explain the procedure that has to be followed if the arbitrator is replaced. The new wording of Article R36, clarifies that, if the claimant or appellant does not appoint an arbitrator within the deadline granted for this, it will automatically mean the cancellation of the procedure, whether this has begun or not.

We should also stress that the CAS has amended Article R44 of Ordinary Proceedings. While the previous version of the Code subjected the hearing being held to the Panel's discretion, the new wording of the article establishes that the hearing is held as a general rule for ordinary proceedings.

Besides this, Articles R46 and R59 of the CAS Code have been amended, which specify that the parties may appeal against the arbitration award within 30 days of notification of the original award.

Finally, we should stress that a new admissibility requirement has been added regarding filing a remedy of appeal before the CAS. With regard to Article R52, as set out in Article R47, the appellant must now exhaust all available legal resources first before turning to the CAS.

DATA PROTECTION

NEW EUROPEAN DATA PROTECTION REGULATION PROJECT

On 15 December 2015, after several years of blocked negotiation, the European Parliament and Council reached an agreement regarding data protection in the EU.

Of the outstanding instruments created, the proposed **European Data Protection Regulation** is of particular interest as it establishes a general framework for the matter, and a **European Data Protection Directive** for personal data treatment in the sphere of police authorities and judicial proceedings. This makes notification mandatory if the personal data have suffered any kind of computer attack, enabling individuals to adopt the measures as quickly as possible that they consider necessary.

One essential point that should be stressed concerns the expansion of what is considered "personal data to become all the information about an identified or identifiable individual (the "interested party"); everyone whose identity can be determined directly or indirectly (...), in particular by means of an identifier, such as a name, an identification number, location details, an online identifier or one or more of the person's specific physical, physiological, genetic, psychological, economic, cultural or social characteristics, will be considered an identifiable person". Progress and adaptation mean that this includes online identifiers, such as cookies, excluded until now from the scope of application.

The Regulation contains the possibility of penalising companies that do not fulfil the obligations established for them; these penalties range from a written warning of the non-fulfilment to economic penalties depending on a number of factors (nature, seriousness, intention, recurrence, cooperation with control authorities).

Another major topic covered by the Regulation is the international transfer of data, in other words, sending personal data outside the European Economic Area. Consequently, the European Commission will determine which third-party countries offer a level of protection in line with the Regulation such that data transfers may be made without out any type of specific authorisation. It contains other circumstances in which the free transmission of data is restricted to third-party states, which would require the appropriate guarantees to be granted by the party responsible or in charge of the third-party state's data treatment; and, lastly, it contains a series of exceptions for specific situations, such as obtaining the interested party's express consent or that the data are needed for the execution of a contract between the interested party and the party responsible, among many others.

Finally, another of the new features of the Regulation is the inclusion of the figure of the *Data Protection Officer* (DPO). This is similar to the security manager set out in the LOPD (Spanish Data Protection Act), but their range of tasks goes beyond control and security; they have intrinsic and extrinsic duties. Generally speaking, the former would include the obligation of informing and advising workers in the organisation of their obligations to comply with data protection regulations. The latter become responsible for answering the information requests of control authorities. They must perform their duties under the prerogatives of confidentiality, secrecy and independence.

Pending approval by the Parliament, when it will come into effect should be pointed out; consequently, the *vacatio legis* of the Regulation is two years as of its publication, so allowing companies sufficient time to adapt to the regulatory provisions contained in it. It will foreseeably be applied in early 2018.

PINTÓ RUIZ & DEL VALLE

BEST LAWYERS AND WHO'S WHO LEGAL SPORTS & ENTERTAINMENT 2015 HIGHLIGHT PINTÓ RUIZ & DEL VALLE

In its annual directory, the prestigious publication *Best Lawyers* has highlighted three lawyers at Pintó Ruiz & del Valle as being among the best specialists. Consequently, it awards this distinction to Dr José Juan Pintó Ruiz for both Procedural Law and Inheritance Law, José Juan Pintó Sala for Sports Law and Rafael Abadía Jordana for Procedural Law.

Similarly, in its annual directory, the prestigious publication *Who's Who Legal — Sports & Entertainment* has selected two lawyers at Pintó Ruiz & del Valle as being among the best sports lawyers. Consequently, it awards this distinction to José Juan Pintó Sala, partner and president of Pintó Ruiz & Del Valle, and Lucas Ferrer, partner and director of the sports law section.

In both publications, the merit of these mentions is that they are based on recommendations made by other professionals. Consequently, the recognition of these Pintó Ruiz & Del Valle lawyers is based on their professional prestige in the areas in question.

These inclusions bear out the philosophy of Pintó Ruiz & del Valle, based on quality, hard work, a job well done, personal customer care and respect for the profession, all in search of excellence.

PLG INTERNATIONAL LAWYERS

On 24 October, the Hotel Berns in Stockholm (Sweden) hosted a new session of the Board of Directors of the PLG International Lawyers group, of which our firm is a founding member and which is present in 23 countries. Attending the Board meeting in representation of Pintó Ruiz & Del Valle were M.^a del Mar Martín and Alfonso Abadía Jordana.

Also held, at the same venue on 23 June, were the various work meetings organised by speciality, on the basis of comparative law, which were attended by Alfonso Abadía Jordana as President of the Comparative Commercial Law, Mergers and Acquisitions and Tax Law group, and Eva Ochoa as President of the Industrial and Intellectual Property, Patents and Trademarks Group, and Yago Vázquez as representative of Pintó Ruiz & del Valle in the Dispute Resolution (Procedural and Arbitration) Group.

These conferences show once again the importance of Pintó Ruiz & del Valle in the group and the strategic importance of such an alliance in the firm's international development.

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