

## NEWSLETTER FEBRUARY 2018

### TRADE LAW

#### *PROPOSED AMENDMENT TO ARTICLE 348 BIS OF THE SPANISH CORPORATIONS ACT*

On 1 December 2017, the Official Gazette of the Spanish Congress published a legislative proposal with a view to amending article 348 bis of the Corporations Act (LSC).

After its inclusion in the Corporations Act, the implementation of the article had been suspended on 24 June 2012; it finally came into force on 1 January 2017.

Article 348 bis was adopted in order to guarantee that minority shareholders received a dividend equal to one third of the benefits obtained during the previous fiscal year. Should that provision not be observed, the shareholders could exercise their right of separation from the company within one month from the date on which the ordinary general meeting of shareholders was held.

Since the lifting of that suspension, the implementation of the article has endangered the survival of certain small and medium enterprises (SMEs) which, by following its provisions, would be placing their financial stability at considerable risk, as they would be forced to disburse the value of the shareholders' shares when they failed to receive their annual dividend.

Hence the proposed amendment, which in very general terms puts forward the following changes:

- To establish a longer period (three years) for obtaining benefits, rather than the current one-year limit. The purpose of this would be to strengthen the company's equity before the right of separation could be invoked.
- To distribute one quarter, and not one third, of the dividends, taking into account the average dividend over the preceding five financial years.
- To strike out any reference to "benefits derived from the exercise of the company's corporate purpose", thus encompassing the full results of the company's activities.
- To reduce its scope by excluding companies under administration and companies with shares admitted to trading, which in turn widens the scope of what is understood by "listed companies".

The aim of this amendments is to clarify the many doubts arising from the actual implementation of the article.

### TAX

#### *THE NEW MUNICIPAL ADDED VALUE TAX*

The Ministry of Finance and the Spanish Federation of Municipalities and Provinces have reached agreement on the reform of the Tax on the Increase in Value of Urban Land ("Plusvalía Municipal", or Municipal Added Value Tax) so that losses on property transactions are no longer subject to this particular tax. The tax shall not be applied in cases when it is clearly proven, by comparing the original purchase price to the sale price, that the value of the land has not increased; to that effect, the amounts actually paid, as reflected in public deeds or verified by the tax authorities, shall be taken into account.

The draft legislative proposal also states that the reform will be enforced retroactively from 15 June 2017, that is, the day that the sentence partially revoking the Local Revenue Authorities Act was published. This will allow those having sold properties at a loss after that date to demand repayment of the amounts disbursed or to contest the settlements issued.

### SPORTS

#### *AMENDMENTS TO FIFA'S RULES GOVERNING THE PROCEDURES OF THE PLAYERS' STATUS COMMITTEE AND THE DISPUTE RESOLUTION CHAMBER AND REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS*

On 1 January 2018, several amendments to FIFA's Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, as well as to its Regulations on the Status and Transfer of Players, came into force. These amendments concern art. 9, para. 1; art. 16, paras. 2, 3 and 8; art. 19, par. 2; as well the inclusion of a new article (9 bis). As for the Regulations on the Status and Transfer of Players, the amendments concern art. 20 and arts. 4 and 5 of Annexe 3. The most salient change in the Rules Governing the Procedures document concerns communications: documents addressed to the Players' Status Committee and the Dispute Resolution Chamber will no longer be transmitted via fax, the preferred method being now signed and dated PDF documents conveyed via e-mail to the following address: [psdfifa@fifa.org](mailto:psdfifa@fifa.org). The above notwithstanding, FIFA will still allow submissions pertaining to the proceedings transmitted by regular mail or courier. As for the amendments to the Regulations on the Status and Transfer of Players, it bears repeating that art. 20 on training compensation now states that the principles thereof shall not apply to women's football.

This clarification was added with the sole aim of reflecting the intention underlying the article and aligning it with existing jurisprudence by the Dispute Resolution Chamber. Furthermore, women's professional football is now included in the Transfer Matching System (TMS), meaning that, from 1 January 2018, all transfers of professional female players must be carried out through the TMS. FIFA also amended articles 4 and 5 of the Regulations on the Status and Transfer of Players in order to bring the regulations in line with the changes introduced in the Rules Governing the Procedures, particularly regarding the proceedings carried out per e-mail before the aforementioned competent bodies. In the light of the above, it must be pointed out that since 1 January 2018 all users of the TMS (i.e. clubs and associations) must ensure that their contact details, such as address, telephone and e-mail address, are valid and kept up to date at all times, as the information introduced in the system shall be deemed a valid means of communication and legally binding to all effects and purposes.

## EUROPEAN UNION

## BRUSSELS PROPOSES MORE FLEXIBILITY OVER VAT RATES

The European Commission (EC) has proposed new rules which would give EU Member States more flexibility to set Value Added Tax (VAT) rates and to create a better tax environment to help SMEs flourish.

The proposals are the final steps of a broader overhaul of VAT rules. With these changes, the EC aims to dramatically reduce the €50 billion lost to VAT fraud each year in the EU while supporting businesses and securing government revenues. Current common VAT rules allow Member States to apply reduced VAT rates to only a handful of sectors and products. Through the new proposals, the EC acknowledges that it is important for States to have the ability to modify tax rates in certain sectors and endows them with greater autonomy in this respect. This in turn would ensure an even playing field for all Member States. For that reason, the EC proposes a standard VAT rate of minimum 15% in all Member States, which would additionally allow them to put in place three reduced rates and one exemption. It further proposes the creation of a list of specific goods and services to which reduced rates under 15% cannot be applied, such as weapons, alcohol and tobacco. The proposals also aim to address the problems faced by smaller businesses trading across borders, which currently suffer disproportionate VAT compliance costs compared with those trading only domestically. That is proving to be a real obstacle to growth; the proposals would allow those companies to enjoy ampler benefits as a result of the new rules, such as simplified procedures and exemptions (provided that a given turnover is not reached).

Lucas Ferrer, Director of the Sports Law Department at our firm, has been officially appointed as a member of the new IAAF Disciplinary Tribunal. The IAAF Disciplinary Tribunal will play a vital role in safeguarding the integrity of the sport of Athletics. The need to create a specialized Disciplinary Tribunal arose due to the magnitude and the unique nature of this particular sport. The aforesaid Tribunal was effectively established in April 2017 and its main role is to hear and determine all breaches of the Integrity Code of Conduct in accordance with the Rules and Regulations. Lucas Ferrer's appointment has been agreed by the Council of this International Association and it will have a minimum duration of two years. Besides Lucas Ferrer, the Disciplinary Tribunal is composed, among others, by the Honorable Michael Beloff QC (Chair), Jan Paulsson, Jeffrey Benz or Despina Mavromati. The IAAF Calendar contains more than 50 competitions every year which take place in more than 35 countries worldwide. The Competition Programme includes World Championships, World Indoor Championships, the Diamond League or the Continental Cup. The IAAF is one of the international federations with more public repercussion and significance in the sports world, being this discipline the most relevant at the Olympic Games. Indeed, Athletics have featured in the Olympic programme since its inauguration in 1896 until the present day.

## BEST LAWYERS

Several lawyers working in Pintó Ruiz & del Valle have been named among the best in Spain by the prestigious *Best Lawyers* magazine in its tenth annual legal directory. Dr. José Juan Pintó Ruiz has been selected Lawyer of the Year in Litigation and merited an honourable mention in Trust and Estates. The magazine also recognizes the work of Mr. José Juan Pintó Sala in Sports Law, Mr. Rafael Abadía in Litigation and Mr. Carlos Noguera in Insolvency and Reorganization Law.

Every year, *Best Lawyers* carries out a thorough research process (involving, among other procedures, confidential nominations from fellow professionals) to single out the best law practitioners in each country. The lawyer obtaining the highest number of votes in a particular territory and field of expertise is then selected as "Lawyer of the Year".

This accolade further propels Pintó Ruiz & del Valle in its indefatigable quest for excellence and its commitment to quality, outstanding work, client orientation and utmost respect for the profession.

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