CORPORATE LAW NEWSLETTER

September 2019

OUTSTANDING REGULATION DEVELOPMENTS

AEPD. Publication of September 4, 2019, of the Spanish Data Protection Agency, on the indicative list of types of processing that do not require a Data Protection Impact Assessment by virtue of article 35.5 of the EU Regulation 2016/679, General Data Protection. Full text.

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OTHER OUTSTANDING REGULATION DEVELOPMENTS

- **WASTE OF ELECTRICAL AND ELECTRONIC DEVICES.** Order PCI/962/2019, of 20 September. It modifies annex III of Royal Decree 219/2013 on restrictions to the use of certain hazardous substances in electrical and electronic devices. Full tex.

- **DGRN. MONEY LAUNDERING. INSCRIPTION IN THE COMPANIES HOUSE OF PROFESSIONAL NATURAL PERSONS.** Instruction of August 30, 2019, of the Directorate General of Registries and Notaries, on the inscription in the Companies House of professional natural persons who deliver services described on art. 2.1.o) of Law 10/2010, of 28 April. of money laundering and terrorist financing prevention. Full text.

- **FINANCIAL ASSETS. TAX QUALIFICATION.** Resolution of September 26, 2019, publishing the annual effective interest rate for the fourth calendar quarter of 2019, for the purpose of qualifying certain financial assets for tax purposes. Full text.

- **PESTICIDES.** Royal Decree 555/2019, of 27 September. It incorporates into Spanish Law the Directive 2019/782 amending Directive 2009/128/EC, with regards to the establishment of harmonized risk indicators. It amends articles. 4.1 and 7.3 and adds annex XI, all from Royal Decree 1311/2012, establishing the framework for action to achieve the sustainable use of pesticides. Full text.

NOTABLE RESOLUTIONS OF THE DIRECTORATE GENERAL REGISTRIES AND NOTARIES

DGRN. INSCRIPTION OF THE INCORPORATION DEED OF A LIMITED LIABILITY COMPANY (SL). Resolution of July 24, 2019. Full text. The present resolution suspends the incorporation deed of a S.L., based on two defaults. On one side, the corporate name included on the communication evidencing the Tax Identification Number (NIF) sent by the Spanish Tax Authorities and the form of model 600 do not coincide with the denomination included on the certificate from the Central Companies House and article 1 of the Company's bylaws. The DGRN considers that such difference does not prevent the inscription's from being rejected and accepts the first default. On the other side, the second default is based on the fact that the company's bylaws expressed that the call to the general shareholders' meeting will indicate the company's name, date, hour and venue for the meeting and the agenda, «as well as the name of the person or persons who make the communication», when, according to the Registrar, it must also express the position of the person or persons who make the call. DGRN confirms the Registrar's qualification. Accordingly, the DGNR confirms the qualification with regards to the second.

DGRN. INSCRIPTION OF AGREEMENTS ADOPTED BY THE GENERAL SHAREHOLDERS' MEETING OF AN S.L. Resolution of July 23, 2019. Full text. The inscription of agreements adopted by the general shareholders' meeting of an S.L. is suspended. These agreements terminated a joint director, but did not appoint another, and the meeting's agenda did not indicate the change of structure of the board of directors. On one side, in relation to the cessation of one of the two joint directors, the DGRN states that the shareholders' meeting could not change the board of directors' structure without including this point on the agenda; and this change of administration system could be approved on another shareholders' meeting, which could be called for this purpose by the joint director. Additionally, a capital increase was approved prior to the meeting subject to qualification, due to its undeniable transcendence in the number of shares corresponding to shareholders and, accordingly, in the calculation of the quorum and majorities to adopt agreements in general shareholders' meeting to be inscribed. On the other side, on the assumption that it is not possible to admit the representation by the shareholders' meeting's chairman on its valid constitution, not being able to consider as shareholders those who have exercised the right of first refusal established on the bylaws for the "mortis causa" transfer of shares, but who have not paid the price at which affected shares must be valued. The registrar understands that those declarations does not imply that the chairman's declarations must, for the mere quality of he/she who formulates them, bind the registrar in any way, to the extent that the registrar must disregard the reality of what happened within the meeting, when protected by notarization, fully ignoring the shareholders' contrary assertions, included on the minutes and of particular relevance to qualify the validity of agreements.

DGRN. CHANGE OF SOLE SHAREHOLDER IN AN S.L. Resolution of July 23, 2019. Full text. The inscription of the change of sole shareholder of an S.L is suspended, due to three reasons: (i) the company's tax identification number has been revoked, (ii) the registry has been closed, due to the lack of deposit of annual accounts, and (iii) the share purchase agreement deed does not include the express declaration of the change of sole shareholder made by the sole director in force, and inscribed in the registry. In relation to the first and second reasons, no document shall be inscribed in relation to the company as long as the non-compliance with the deposit persists, except for expressly foreseen exceptions, which do not include the change of sole shareholder which inscription is aimed (articles. 282 LSC, 378 and DT 5th RRM). With regards to the third reason, the statement of sole proprietorship must be inscribed in the Companies House, expressing in the inscription the change of identity of the sole shareholder, and its omission is penalized with the sole shareholder's personal unlimited responsibility (articles 13 and 14 LSC). The DGRN considers that the company must declare and announce its sole proprietorship, revealing the condition of sole shareholder in the Companies House and in the shareholders' record (article 104 LSC), and thus confirms the Registrar's qualification.

REMARKABLE CASE LAW

RULING BY THE PROVINCIAL COURT OF A CORUÑA OF March 25, 2019.Full text. The plaintiff challenges the corporate agreements through which all profit obtained in 2014 and 2015 are applied to reserves in a Limited Liability Company (S.L.), on which the plaintiff is a minority shareholder. The shareholders' meeting is in charge of deciding by simple majority the application of the year's results. Moreover, this type of agreements is not harmful for the shareholders' equity, except for this case, since the specification of the shareholder's right to participate in the distribution of profits is indefinitely postponed. The Tribunal concludes by accepting that this is an abusive action by the simple majority, which imposes the agreement without responding to the company's reasonable need, and does so in its own interest.

RULING BY THE GENERAL COURT OF THE EUROPEAN UNION, of September 24, 2019. Full text. The General Court maintains the community model registration of a scooter, considering that there are not many significant differences between the model which nullity is aimed and the one previously registered. The Regulation on community drawings and models establishes that the model will be protected if it is new and has a singular nature. And, in order to appreciate its singular nature (article. 6), the general impression it must cause on informed users must differ from the general impression caused by any other. In the present case, the informed user is a person endowed with special surveillance and particularly mindful and sensitive to these products' design and aesthetics, and therefore differences between one vehicle and another do not go unnoticed to him. Due to the different impressions caused by them, there is no risk of confusion by the pertinent public to consider the model's nullity. Lastly, the Court does not consider that there has been an unauthorized use of the previous model as a work protected by the Italian and French copyright regulation, due to its rounded, feminine and vintage nature, whereas the model which nullity is aimed is characterized by its straight lines and angles, and thus their impressions are different.

RULING BY THE SUPREME COURT (CIVIL CHAMBER) of July 18, 2019. Full text. The SC pronounces on an alleged violation of the rules related to unfair competition actions and reiterates the provisions of the ECJ. First of all, article 13.1.b) of the Regulation (EC) 510/2006, on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, protects the designations of origin registered against any evocation of it, and does not solely refer to words through which a registered designation could be evoked, but also to figurative signs that could cause an evocation to the same product. In this case the conflict is caused by the use of signs such as a windmill or the image of a horse (Rocinante) that cause the evocation of the protected designation of origin of Castilla-La Mancha. This evocation entails a sufficiently direct and unequivocal conceptual proximity between these signs, determining an infringement on the protected designation of origin, in agreement with article 13.1.b) of the Regulation. With regards to an alleged unfair competition action, the protected designation of origin constitutes an industrial property right. On these rights, the case law follows the so-called principle of relative complementarity, according to which the mere infraction of these trademark rights cannot constitute an unfair competition action. Accordingly, the Court determines that the evocation of a registered designation through the use of figurative signs constitutes an infringement of the protection designation of origin.

RULING BY THE LABOUR COURT No. 10 OF LAS PALMAS DE GRAN CANARIA of September 23, 2019. Full text. The Labour Court no. 10 of Las Palmas de Gran Canaria declares as unfair the dismissal of a worker who, having delivered services for 13 years as a clerk (accounting officer) in a catering company, was dismissed to be substituted by a computer software that would perform her tasks. The worker's dismissal letter argued technical, productive and organizational causes to justify the worker's dismissal. However, the judge considers that the fact that a robot is introduced on productive processes and eliminates the need for certain work posts, improving the productivity and reducing costs, cannot be considered as cause for objective dismissal.

REVIEW – Territorial scope of the right to withdrawal of links in Internet search engines.

The Court of Justice of the European Union, through ruling of **September 24, 2019**, has resolved on the territorial scope of the withdrawal of website links, which include personal data, from the list of results obtained on a search made from a person's name.

The first matter is whether article 17, section 1, of Regulation (EU) 2016/679, related to the processing of personal data and the free circulation of such data, regulating the "**Right to be forgotten**", must be interpreted in the sense that, when the manager of a search engine approves a request of withdrawal of links, the search engine manager is compelled to proceed to such withdrawal in all versions of its search engine or, otherwise, the links must only be eliminated on versions that correspond to the set of the Member States or even solely in the Member State where the request for withdrawal has been filed, combining it with the "geographic blocking" technique to make sure that an internet user cannot access the links.

Indeed, the right to personal data protection does not constitute an absolute right, but must be considered in relation to its function in society and maintain the balance with other fundamental rights, based on the proportionality principle. And then, it adds that:

"the balance between rights to the respect of private life and the personal data protection, on the one hand, and the internet users' freedom of information, on the other, could significantly vary in different parts of the world".

In this sense, the ECJ considers that, although the legislator has established, with article 17.3.a) of the Regulation, a balance between such right and such freedom within the Union, such balance has not been established in the withdrawal of links outside the Union.

As a conclusion, the manager of a search engine cannot be required to withdraw links in all versions of its engine, since the legislator has not opted for allocating a scope to this right to be forgotten beyond the territory of the Member States.

With regards to whether data shall be withdrawn, for the right to be forgotten, in the search engine's versions corresponding to the Member States or only in the engine's version corresponding to the State of residence of the withdrawal's beneficiary, the ECJ considers that, in the first instance, the withdrawal of links must be verified in all Member States. And, accordingly, the Union's legislator has established standards related to personal data protection through a regulation directly applicable to all Member States.

The Regulation (EU) 2019/679 provides the Member States' national control authorities, in the case of cross-border personal data processing, with the necessary instruments and mechanisms to reconcile the data subject's rights to the respect for private life and personal data protection with the interest of the set of the Member States' public to access to the corresponding information, and thus to be able to adopt a decision on the withdrawal of links covering the totality of searches made from the data subject's name to the withdrawal of links from the Union's territory.

The search engine's manager is in charge of adopting sufficiently efficient measures to ensure the effective protection of the data subject's fundamental rights, and their effect must be to prevent or hinder the Member States' internet users' access to the corresponding links through a search made from the data subject's name.

Accordingly, article 17.1 of the Regulation 2016/679 must be interpreted in the sense that, when a search engine's manager approves a request of withdrawal of links by virtue of these provisions, the manager will be compelled to such withdrawal, not in all engine versions, but on the versions corresponding to the set of the Member States. Moreover, it must be combined, where necessary, with measures that, in full respect for legal requirements, effectively prevent, or at least seriously hinder, internet users who perform a search based on the data subject's name from one of the Member States, the access through the list of results obtained after such search to links subject to such request of withdrawal.

The full text may be consulted at the following link.

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