SIMPLIFICATION OF PUBLICATION DUTIES IN THE SPANISH COMPANIES ACT

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Spanish legislators have had to make an effort to adapt stagnant statutory text to practical realities in search of cost savings for companies through the use of technologies. In line with this goal, legislators enacted Act 1/2012, June 22nd, 2012 regarding the simplification of duties of information and documentation of mergers and splits in companies (the Act), the purpose of which is to boost the utilisation of a company's Internet websites.

The Spanish Companies Act is thus modified, yet again. Although it contains other modifications, this article focuses on those that are of the most practical interest

The impact on corporate internet websites

The Shareholders Meeting is the corporate body authorised to create an Internet website, which must be expressly announced in the Agenda of the summons. The authority to "modify, close down and transfer" the company's website, however, falls on their administrative body, unless the Articles of Association state otherwise. We do not understand the reasons for such distinction.

The activities of “modifying, transferring and closing down” the company’s Internet website(s) must be registered in the Companies’ Registry and in the BORME (the Official Gazette of the Commercial Registry). This duty is extended to the corporate Internet website itself, where a notice must remain published for 30 days. While the publication of the announcement in the BORME may be free, the registration fees are not. We therefore question whether the Act has really achieved the agility and saving intended.

The responsibility for guaranteeing the security of its website falls on the company itself, as well as the authenticity of the documents and access thereto by allowing users to download and print everything that has been published. Directors nonetheless are responsible, jointly and severally with the company, for keeping announcements duly inserted on the company’s website during the pertinent terms, uninterruptedly. A statement from a company director should be enough to prove this. It may not be a perfect method, but it is a solution after all.

The impact on corporate communications with stakeholders

New Article 11 quater deals with the communications between the company and its stakeholders, intending to make communications faster. The agreement of the shareholder to receive company communications using electronic means is required, although such acceptance may be implied. A company or its stakeholders can also ask for “information, documentation and requests” to be provided electronically.

The impact on the formality of the summons for the shareholders meeting

Article 173 is modified by identifying the company’s website as the preferred method of providing a summons for the company’s shareholders meeting. This is in contrast to prior regulations, where companies were simply given the possibility to consider this option in their Articles of Association. For these provisions to apply, however, the company’s Internet website must be registered and published, and the summons for the shareholders meeting must be published and announced on the website.

Special attention must be paid to stakeholders living abroad. Articles of Association may require them to be individually summoned only if the shareholder has previously designated a place to receive such notices within the national territory. Absent such designation, individual notice is not required.

The suspension of the right of separation

A Transitory Article addresses the right to separate from non-publicly traded companies. This applies to those stakeholders who voted for the distribution of corporate profits on or after the fifth year since the registration of the company, if the shareholders meeting does not agree on the distribution as dividends of, at least, one third of the legally distributable profits arising from the exploitation of the corporate object obtained during the previous year.

Where the right of separation applies, a company is required to purchase the shares of the shareholder who exercised its right. In view of the crisis, the legislators have temporarily suspended this right to avoid more winding-up or bankruptcy procedures. The temporary suspension of this right will end up its effect on December 31st, 2014, and will therefore apply to the first meeting held in the first half of 2015, in which the company’s annual accounts for 2014 will be approved.

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