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NEW DEVELOPMENTS REGARDING THE CAUSE OF DISSOLUTION DUE TO LOSSES

On December 28th, Royal Decree-Law 20/2022, of December 27th, was published in the Official State Gazette (BOE) on measures to respond to the economic and social consequences of the war in Ukraine and to support the reconstruction of the island of La Palma and other situations of vulnerability, which incorporates an important novelty regarding the cause of mandatory dissolution due to losses provided in Article 363.1.e) of the revised text of the Capital Companies Law.

As you will recall, when COVID-19 broke out, an accounting moratorium was established to exclude 2020 losses, subsequently extended to 2021 losses, for the purposes of determining the causes for dissolution of capital companies. This measure was intended to avoid the liquidation of companies that were viable under normal market operating conditions, thus limiting economic impact of COVID-19.

According to the Explanatory Memorandum of the recent Royal Decree-Law, in view of the energy crisis accentuated by the war in Ukraine, it is considered appropriate to grant an additional margin so that viable companies that are experiencing greater difficulties can re-establish their equity balance.

In this regard, Article 65 of the Royal Decree-Law amends paragraph 1 of Article 13 of Law 3/2020, of September 18, on procedural and organizational measures to address COVID-19 in the area of the Administration of Justice, establishing the following:

For the sole purpose of determining the existence of the cause for dissolution provided for in Article 363.1.e) of the revised text of the Capital Companies Law, the losses of fiscal years 2020 and 2021 will not be taken into consideration until the close of the fiscal year beginning in 2024. In other words, at the close of fiscal years 2022, 2023 and 2024, the equity position of the companies will be valued without considering the losses generated in fiscal years 2020 and 2021. If, excluding the losses of the years 2020 and 2021, in the result of the fiscal years 2022, 2023 or 2024, losses are appreciated that leave the net equity reduced to an amount less than half of the capital stock, a meeting must be caked by the administrators or may be requested by any shareholder within two months from the close of the fiscal year in

accordance with Article 365 of the aforementioned Law, to proceed with the dissolution of the company, unless the capital is increased or reduced to a sufficient extent.

Undoubtedly, this measure is an "oxygen balloon" for those companies that, being viable or in the process of becoming so, carry losses generated in the fiscal years in which COVID-19 had a greater incidence and, moreover, if it were not for this new regulation, would lead them to incur in a dissolution cause.

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