1. INTRODUCTION

This document contains a summary of the most relevantly considered legislative and case law developments for the period between 1 October and 31 December 2022. These developments fall within the scope of the Corporate & M&A practice, thus concerning Commercial Law (including Companies Law), as well as certain matters on Civil Law relating to obligations and contracts.

2. LEGISLATION

2.1 STATE LEGISLATION

Law 28/2022, of 21 December, to Promote the Start-up Ecosystem.

This law (the "**Start-ups Law**") aims to establish a regulatory framework for start-up companies and to promote their incorporation and development. To this end, corporate, tax and administrative measures are taken.

First of all, the Start-ups Law establishes the specific requirements to be met by legal entities in order to be considered as start-ups and, consequently, to benefit from the measures contained therein:

- seniority of the company (being newly created or, without being newly created, not having exceeded 5 years from its registration with the commercial registry; extendable to 7 years for companies in the biotechnology, energetic, industrial or other strategic sectors);

- independence (not having been created as a result of a merger, split-off or transformation);

- having a permanent registered office or establishment in Spain;

- 60% of the personnel must have an employment contract in Spain;

- innovative nature of the project (determined in each case by the competent public administration, as detailed below);

- not being a listed company; and

- not distributing, nor having distributed, dividends.

In this sense, the Spanish Innovation National Enterprise (*Empresa nacional de Innovación SME*, S.A.) (ENISA) shall be in charge of receiving the applications and analysing whether all the requirements for the qualification of the company as start-up are met. The deadline for decision is three months from the time the application is filed and shall be deemed to be accepted if no express decision has been issued within three months. It should also be noted that the status of start-up company shall be recorded with the commercial registry.

Within corporate framework, and in relation to its incorporation, certain measures are established to expedite and make procedures more flexible, i.e., a procedure on electronic incorporation through DUE (*Documento Único Electrónico*) and CIRCE (*Centro de Información y Red de Creación de Empresas*) mechanisms is established, the deadlines for registration with the commercial registry are reduced from fifteen to five business days and the register and notary fees are also reduced.

Furthermore, the Start-ups Law provides for emerging companies not to be subject to dissolution for losses that reduce their net worth to less than half of their share capital, regulated in Article 363.1 section e) of the Spanish Capital Companies Act (*Ley de Sociedades de Capital*) ("**LSC**"), until three years have elapsed from the time of their incorporation, provided that a request for declaration of bankruptcy has not been filed.

Emerging companies incorporated as limited liability companies may also, by resolution of the shareholders' meeting, authorise the acquisition of shares, up to a maximum of 20% of the capital share, for subsequent transfer to directors or employees of the company executing a remuneration plan.

Royal Decree-law 20/2022, of 27 December, 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.

As a result of the current geopolitical, economic and social situation, the royal decree-law aims to contain prices and to support the most affected citizens and companies in the following areas: (i) electric power; (ii) food; (iii) transport; (iv) gas intensive industry; (v) economic and financial stability; and (vi) social shield; and, in respect thereof, it establishes measures in a variety of areas.

In particular, we find relevant to highlight the following:

(i) Extension of the so-called "accounting moratorium" until the end of fiscal year beginning on 2024: for the sole purpose of determining the occurrence of the cause of dissolution provided for in Article 363.1.e) of the Spanish LSC, losses for fiscal years 2020 and 2021 shall not be taken into consideration until the end of the fiscal year beginning on 2024; i.e., at the end of fiscal years 2022, 2023 and 2024, the equity situation of the company shall be valued without taking into account the losses generated in fiscal years 2020 and 2021.

(ii) Extension until 31 December 2024 for the application of the suspension of deregulation regime for certain foreign investments made by residents of other European Union and European Free Trade Association residents: on a transitory basis, foreign direct investments made by other European Union and European Free Trade Association residents shall be subject to prior administrative authorisation: (i) in companies listed in Spain or other non-listed companies if the value of the investment exceeds €500,000,000; (ii) in which the investor holds 10% of the Spanish company share capital or acquires control of said company; and (iii) in certain areas that affect public order, public safety and public health.

(iii) Inclusion of the acquisition of assets in the concept of foreign direct investment of Art. 7 bis of Law 19/2003, of 4 July: the acquisition of assets is expressly included as an event affected by the regulation concerning the suspension of deregulation regime for certain foreign direct investments in Spain.

(iv) Simplified procedures for the authorisation of renewable energy projects: in order to reduce energy dependence, contain prices and ensure supply, the procedures for the authorisation of renewable energy generation projects under the jurisdiction of the General State Administration (*Administración General del Estado*), which have obtained a favourable environmental impact assessment report, are declared urgent for reasons of public interest.

Royal Decree 1055/2022, of 27 December, on packaging and packaging waste.

Its main objective is to establish the legal regime applicable to packaging in order to prevent and reduce its impact on the environment; in respect thereof, among others: (a) the use of reusable packaging and recycling is encouraged; (b) obligations regarding transparency for

packaging information are increased; and (c) the extended producer responsibility regime for all packaging is developed.

In particular, the following obligations should be highlighted:

(i) The packaging section for the Registration of Products Producers (*Registro de Productores de Productos*) is created and the obligation for products producers to register before 29 March 2023 is established. Failure to register may result in a fine from 2,001 euros to 100,000 euros.

The concept of "product producers" is broad, including, among others:

- packers, broadly defined (including without limitation, service companies that package products at the point of sale);
- economic agents involved in the importation or acquisition in other EU Member States of packaged products for their sale;
- the owners of distribution brands based in Spain, as long as the product producer is not identified; or
- e-commerce platform placing on the market packaged products from outside Spain, as long as the producer has not appointed an authorised representative.

(ii) Insofar as the registration referred to in the preceding paragraph is mandatory, the Royal Decree establishes: (a) annual reporting obligations for packaging placed on the market in each calendar year; and (b) that the number of registration with the Register of Products Producers shall be stated on invoices and other commercial documents.

(iii) Furthermore, product producers (as defined in the preceding section (i)) shall achieve the recycling targets set in the royal-decree. By way of example, a minimum recycling target of 65% for the weight of all packaging waste for 2025 is established.

2.2 COMMUNITY LEGISLATION

Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy.

In view of the current context and in order to tackle the exposure of European consumers and companies to high and volatile energy prices, the Regulation seeks to promote specific measures capable of accelerating the pace of deployment of renewable energies in the European Union in the short term, by means of temporary emergency rules to accelerate the permit-granting process.

Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures.

This Directive aims to achieve a more balanced representation of women and men among the management bodies of listed companies.

In particular, we highlight the obligation of member states to ensure that, before 30 June 2026, listed companies have achieved one of the following targets:

(i) that underrepresented sex members hold at least a 40% of non-executive director positions; or

(ii) that underrepresented sex members hold at least a 33% of members of the board of directors' positions.

The deadline for transposition of the Directive is 28 December 2024.

Directive (EU) 2022/2464 of the European Parliament and of the Council, of 14 December 2022, amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

On 2014, the European Union legislator introduced a requirement to disclose information on environmental, social and employee matters, respect for human rights, and anti-corruption and bribery matters on certain undertakings (being highlighted, among others, those whose securities are admitted to trading on a regulated market in any member state).

Directive (EU) 2022/2464 further details the sustainability reporting requirements, extends the list of parties required to report sustainability information and establishes four phases for its transposition:

(i) companies already subject to Non-Financial Reporting Directive shall be required to report information for fiscal year 2024 in 2025;

(ii) large companies (i.e., those meeting certain turnover threshold) not currently subject to Non-Financial Reporting Directive shall be required to report information for fiscal year 2025 in 2026;

(iii) listed SMEs, except for micro-entities, small and non-complex credit institutions and captive insurance undertakings shall be required to report information for fiscal year 2026 in 2027; and

(iv) third-country companies whose net turnover in the European Union exceeds 150 million euros and has at least one subsidiary or branch in the European Union exceeding certain threshold shall be required to report information for fiscal year 2028 in 2029.

3. SUPREME COURT JUDGMENTS

Civil Division, Judgment 701/2022 of 25 October 2022 – Challenge to corporate resolutions due to abuse of rights.

Facts: Several individuals, partners and directors of the parent company of a group, who form in turn the majority of the board of directors of the parent company and other companies of the group, carry out certain corporate actions within the group which, although formally in accordance with law, may have the effect of completely distorting the rights that could eventually be declared in an open proceeding.

In such context, the Division must examine the application of the jurisprudential doctrine relating to the nullity of corporate resolutions for abuse of rights that does not harm the company or the minority shareholders but a third party (under the regime prior to the reform of the Capital Companies Act by Law 31/2014, of 3 December).

Ruling: the Division reiterates that, in accordance with its jurisprudence, "*it must be stated that the requirements demanded by Art. 7.2 of the Spanish Civil Code* ("**CC**") *and the jurisprudence*

interpreting it are met in order to consider the existence of abuse of rights in this corporate matter: (i) the formal or outwardly correct use of a right; ii) that causes damage to an interest not protected by a specific legal prerogative; and c) the immorality or antisociality of that conduct, manifested in a subjective form (exercise of the right with intent to harm, or without real interest in exercising it, i.e., in the absence of legitimate interest), or in an objective form (abnormal exercise of the right, in a manner contrary to its economic and social purposes)." It goes on to state that "*for the corporate resolution to be considered null, the only case in which third parties with a legitimate interest had standing to challenge it, it had to be "contrary to the law.*" In this respect, the Division refers to its doctrine recalling that "*although in the regulation of the challenge to corporate resolutions there is no express mention to abuse of rights or abuse of power, this did not constitute an insurmountable obstacle for the annulment of corporate resolutions in such cases, since, according to Art. 7 of CC, they are contrary to the law*" and that "*what causes the nullity of the agreement is that […] the damage to the third party has been produced by an agreement contrary to the law, and that this opposition to the law consists of the agreement constituting an abuse of rights.*" The Division concludes by reasoning that, in view of the circumstances and the *raison d'être* of the challenged resolutions (to empty of content the political rights obtained by the father as usufructuary), they incur in abuse of rights and, therefore, are contrary to the law.

Civil Division, Judgment 777/2022 of 16 November 2022 – Director's liability to pay for corporate debts.

Facts: The company Asistel Plus 2010, S.L. ("**Asistel**") contracted a commercial debt with the company Gestión de Comunicaciones Alternativas, S.L. ("**GCA**") in September 2012. Asistel's annual accounts for fiscal year 2012 were closed with negative equity. At the close of fiscal year 2013, its net worth ceased to be below half of its share capital and continued to be so in the following years. GCA filed a lawsuit against the sole director, exercising the latter an action for liability under Art. 367 of LSC and arguing that "*the company Asistel was in state of dissolution before its credit arose (24,383 euros), without its dissolution being requested within the following two months, for which the director of Asistel was jointly and severally liable for the payment of said credit.*" The Division must examine the application of the doctrine relating to the extinction of the director's liability during the time in which he failed to promote the dissolution of the company, due to the subsequent removal of the cause for dissolution.

Ruling: The Division considers it proven "*that the plaintiff's credit arose when Asistel was in state of dissolution (September 2012), without the director having fulfilled the duty to request the dissolution of the company or having removed the cause for dissolution by any of the legal*

mechanisms" and, in respect thereof, reiterates *"the doctrine contained in judgment 585/2013, of 14 October, stating that the removal of the cause for dissolution, in this case because the situation of losses that reduce the net worth below half of the share capital is overcome, does not exempt the director from its liability to pay for corporate debts arising prior to the removal of the cause and while he was the director."*

Civil Division, Judgment 798/2022 of 22 November 2022 – Group concept.

Facts: Two companies with the same registered office, the same chairman, managed by the same directors and majority owned by the same partners, submitted two separate bids in a public bidding process. Both bids were considered reckless because they were submitted by two closely related companies, apparently individually, with two virtually identical bids, and were therefore not awarded the tender. The Division must examine the application of the jurisprudential doctrine on the consideration of a group of companies under Art. 42.1 of CC.

Ruling: The Division concludes that *"the notion of group is defined for the purposes of the aforementioned Art. 86.1 of Royal-Decree 1098/2001, not because of the existence of a "unity of decision", but because of the situation of control, as provided for in Art. 42.1 of CC,"* a control that can be held directly or indirectly, and, consequently, *"with this reference to direct or indirect control, of one company over another or others, the notion of group is extended beyond the cases in which there is organic control, because one company (parent) has a majority shareholding or is involved in the management body of other companies (subsidiaries). It is also extended to cases of indirect control, for example, by acquiring rights or entering into contracts giving the parent company control over the financial and commercial policy and decision-making process of the group. And the notion of "control" implies, together with the legal power of decision, an indispensable minimum content of corporate powers. In order to illustrate the content of these powers, it is useful the reference made in the doctrine to the General Accounting Plan, Part Two, rule 19, which, when defining "business combinations," it refers to "control" as "the power to direct the financial and operating policies of a business with the aim of obtaining economic benefits from its activities."* It also recalls that the Division's Judgment 190/2017, of 15 March, *"stated that, in order for a group of companies to exist, it is not necessary that the person who exercises or may exercise control be a commercial company that has the legal obligation to consolidate the annual accounts and the management report. Thus, if there is control in the sense defined in Art. 42.1 of CC, for there to be a corporate group (in that case for the purposes of the Bankruptcy Law) it makes no difference whether at the top of the group there is a commercial company (which would have the accounting obligation to*

prepare consolidated annual accounts and management reports) or some other subject (individual, foundation, etc.) that does not have those accounting obligations." Therefore, "*if there is control, in the sense given in Art. 42.1 of CC, there is a group, even if the bidding companies are subsidiaries or dominated, and even if the control of the group is held by an individual, provided that he has the necessary corporate mechanisms to adopt any decision in the bidding companies (as in the case of a majority shareholding in the share capital)*".

Civil Division, Judgment 812/2022 of 22 November 2022 – Conflict of interest of the sole director.

Facts: The sole director of Concentric S.A., in his capacity as such and in his own name, granted a payment *in lieu* (*dación en pago*) public deed, by virtue of which he contributed three houses of his property to the company, as partial compensation for a debt owed to the company by the director. The Division must examine whether the inevitability of the conflict of interest, alleged by the plaintiff, is an essential requirement for the waiver provided for in Art. 230 of LSC.

Ruling: The Division concludes that "*the "inevitability" of conflict is not a requirement for waiver. The requirements for waiver are procedural (basically, which corporate body and how the waiver is to be granted) and substantive (basically, those of fairness and transparency); it is not found among them that the conflict is unavoidable. Therefore, in principle, the shareholders' meeting could exempt the director from his duty to refrain from entering into transactions with the company, such as the payment* in lieu *in question.*"

Civil Division, Judgment 912/2022 of 14 December 2022 – Bankruptcy administration fees.

Facts: In 2009, the company Blocerba, S.A. filed for bankruptcy proceedings and, in October 2013, the order to open the liquidation phase was issued. In said order requesting the opening of the liquidation phase, the fees of the bankruptcy administrators were included as credits against the estate. The General Treasury of the Social Security (*Tesorería General de la Seguridad Social*) (the "**TGSS**") filed a suit requesting that the bankruptcy administration was not entitled to receive any remuneration as of 30 July 2015, since the third transitory provision of Law 25/2015, of 28 July, on the second chance mechanism, reducing the financial burden and other measures of a social nature (the "**Law 25/2015**") had already entered into force. The Division must determine whether the regime of remuneration of the bankruptcy administration introduced by the third transitory provision and the twenty-first

final provision of Law 25/2015 can be applied to bankruptcy proceedings in which the liquidation phase was opened prior to the entry into force of this third transitory provision.

Ruling: The third transitory provision of Law 25/2015 modified the remuneration regime for bankruptcy administrators, including a temporary limitation of twelve months on the right to collect remuneration during the liquidation period. The Division concludes that this transitory provision cannot be applied retroactively, since this retroactivity does not affect acquired rights (the fees prior to its entry into force) but rather the expectation of payment of remuneration that is accrued month after month.

4. RESOLUTIONS OF THE GENERAL DIRECTORATE OF LEGAL SECURITY AND PUBLIC TRUST

Resolution of 10 October 2022, of the General Directorate of Legal Security and Public Trust (BOE 271 of 11 November 2022) – Capital reduction and increase.

Facts: On 18 November 2021, the general shareholders' meeting of the company Solartel Écija, S.L. unanimously approved a reduction of the share capital from 18,600 euros to 0 euros as a result of losses, and a simultaneous capital increase up to the legal minimum without the balance sheet on which the transaction is based having been verified by an auditor. Said transaction was qualified as defective by the Commercial Registrar because the capital resulting from the transaction was lower than the initial capital and the balance sheet had not been audited. Consequently, to correct the defect, on 28 March 2022, the universal shareholders' meeting approved a capital increase up to the amount prior to the previous resolution when reducing capital due to losses. The deed was qualified as negative by the Commercial Registrar because the exemption from the requirement of verification of the balance sheet by an auditor cannot be predicated on two corporate resolutions separated in time.

Ruling: The General Directorate of Legal Security and Public Trust (*Dirección General de Seguridad Jurídica y Fe Pública*) (DGSJFP) revokes the Registrar's qualification notice. The DGSJFP establishes that *"what is relevant is not whether there is a subsequent agreement or whether there has been a more or less long period between one and another, […], but whether such subsequent agreement can correct or complement the first one in such a way that its insufficiency or even its lack of validity losses relevance."* That is to say, what is essential is not the time lag between the reduction and increase agreements but their mutual causation. The DGSJFP considers that

in the present case *"the previous resolution adopted unanimously at the shareholders' meeting regarding the reduction of capital to zero as a result of losses and the simultaneous resolution to increase capital lacks the legally enforceable requirement of verifying, a deficiency that is remedied by the subsequent resolution to increase capital adopted in the same circumstances which, because of being causally linked to the previous resolution, cannot be considered in isolation."*

Resolution of 13 October 2022, of the General Directorate of Legal Security and Public Trust (BOE 271 of 11 November 2022) - Resignation as member of the board of directors.

Facts: A member of the board of directors of the company Koyasan Foods, S.L.U. submits to the Commercial Registry the resignation letter with notarised signature and proof of delivery by bureaufax to the company. The Commercial Registry did not carry out the registration because it was not notified in an irrefutable manner, as required by Article 147.1 of the Commercial Registry Regulations (*Reglamento del Registro Mercantil*) (the "**RRM**"). In this sense, Art. 147.1 of the RRM establishes that the resignation of the director's position must be reliably notified to the company in the manner provided for in Art. 202 of the Regulations of the Organisation and Regime of the Notary Public's Office (*Reglamento de la organización y régimen del Notariado*) (the "**Notarial Regime**"), i.e., with dispatch by the notary required for this purpose of registered letter with acknowledgment of receipt to the company's registered office. In case it is not delivered, it would be required to be notified in person by the notary.

Ruling: The issue under discussion focuses on the manner in which the reliable notification required by Article 147.1 of the RRM must be made. The DGSJFP confirms the qualification notice and states that "*the proper development of the company's business requires that the company has timely knowledge of the vacancies [...] in its administrative body, in order to enable the immediate adoption of the necessary precautions to make up for such a casualty.*" Therefore, "*the registry recognition of the resignation is subject to its prior reliable communication to the company.*" The notarial certificate evidencing that the waiver document has been sent by registered mail with acknowledgment of receipt shall be deemed sufficient, provided that: (i) it is sent to the company's registered office, and (ii) the acknowledgment of receipt of the dispatch shows that it has been duly delivered to that address. In the event that the mailing has been unsuccessful, the notary must give personal notification in accordance with the terms of Article 202 of the Notarial Regulations.

Resolution of 24 October 2022, of the General Directorate of Legal Security and Public Trust (BOE 281 of 23 November 2022) - Termination and appointment of sole director.

Facts: On 17 June 2022, the company Gold Moon Patrimonial, S.L.U. submitted for registration a deed of termination of the sole director and appointment of a new sole director. The Commercial Registry did not register the title of the deed submitted for qualification due to a contradiction with another previously filed (on 14 June 2022), consisting of a deed of termination of the sole director and appointment of a new director who does not coincide with the person named in the qualified deed.

Ruling: The DGSJFP confirms the qualification notice and explains that *"the qualification of a document must be made on the basis of what results from the title being qualified and the tabular situation existing at the time it is filed with the Registry"* and, therefore, the documents pending dispatch should be taken into account. In application of the principle of legality and the obligation to qualify jointly, the registration must be denied, since *"two documents of contradictory and incompatible content have been presented, and from which their validity cannot be simultaneously predicted, but which, being both authorised by a notary, are protected by the same legal presumptions."* By virtue of the foregoing, the Courts of Justice shall have to determine which of the two titles prevails, as this is beyond the competence of the Commercial Registry.

Resolution of 4 November 2022, of the General Directorate of Legal Security and Public Trust (BOE 289 of 2 December 2022) – Capital reduction due to the redemption of shares.

Facts: On 16 March 2022, the company Shoen Group, S.L. recorded in public a capital reduction agreement for the redemption of 7,644 own shares, which were previously acquired by the company in March 2019. The Commercial Registry issues a negative qualification notice because: (i) there is no record of the creation of the restricted reserve provided for in Articles 141 and 332 of LSC as a guarantee for corporate creditors, and (ii) the company agrees to redeem the shares three years after their acquisition and, therefore, the joint and several liability for corporate debts of Art. 331 of LSC cannot apply, since the transferring shareholder is no longer a shareholder of the company.

Ruling: The DGSJFP revokes the qualification notice. A distinction must be made in the case of a capital reduction due to the redemption of shares whose acquisition: (i) does not entail the restitution of contributions (Art. 332 of LSC), or (ii) does entail a restitution of contributions (Art. 332 of LSC). The creation of the restricted reserve is only mandatory if the

acquisition by the company of the redeemed shares does not result in the restitution of its contribution to the transferor, and therefore shall be mandatory in the case of Art. 141.1. and voluntary in the case of Art. 332 of LSC. The DGSJFP concludes that, for the purposes of corporate law, since the acquisition of the shares was for valuable consideration, the reduction must be subject to the regime of those produced by the restitution of shares (Art. 332 of LSC). Thus, the protection of creditors shall be carried out in accordance with the provisions of Article 331 of LSC, which may be replaced by the creation of a restricted reserve, which is voluntary and is conditional upon the existence of profits or free reserves that allow it to be set aside.

Resolution of 15 November 2022, of the General Directorate of Legal Security and Public Trust (BOE 291 of 5 December 2022) – Simultaneous capital reduction and increase.

Facts: The company Polaria Proyectos y Obras, S.A. recorded in public the corporate resolutions to reduce capital by remittance of capital calls and to increase capital by conversion of reserves, both for the same amount, adopted at the general shareholders' meeting on the same day. The Commercial Registry issues a negative qualification notice because the capital reduction resolution in public limited companies must be published in the Official Gazette of the Commercial Registry (*Boletín Oficial del Registro Mercantil*) (BORME) and on the company's website or, alternatively, in a newspaper of wide circulation advising the company's creditors of their right of opposition.

Ruling: The DGSJFP revokes the qualification notice. In view of the interests at stake, it is considered unnecessary to publish the capital reduction because: (i) there is no restitution of contributions and, consequently, no right of opposition by creditors; and (ii) the parallel increase in the amount of the guarantee figure that the capital share represents. The DGSJFP has consistently held that measures to protect shareholders and creditors only make sense if the interests of any of them are in danger of being harmed. In this sense, after the execution of the capital reduction and increase, the amount of capital share remains unchanged, and the payment of the capital increase is evidenced by the auditor's report, therefore, the publication of the resolution and the creditors' right of opposition are meaningless if both operations, the capital reduction and the capital increase, are considered as a whole.

Resolution of 2 December 2022, of the General Directorate of Legal Security and Public Trust (BOE 304 of 20 December of 2022) – Termination of directors.

Facts: The Company Onlycable Comunicaciones, S.L., with a majority vote, removes all the members of the board of directors. Subsequently, other resolutions adopted by the universal general shareholders' meeting were made public, whereby the resolutions adopted at the general shareholders' meeting at which the registered resignations were agreed upon were declared null and void, and new members of the board of directors were appointed, with the favourable vote of 71,25% of the capital shares. The Commercial Registry issued a negative qualification note, indicating, among other defects, that, according to Article 20 of the registered articles of association, in order to modify the manner of organising the administration and the composition of the board of directors, the favourable vote of at least 80% of the votes corresponding to the shares is required and, therefore, the appointment has not been adopted with the required quorum.

Ruling: The DGSJFP revokes the indicated defect. The DGSJFP explains that Art. 212 of LSC, on the number of members of the board of directors, deals with the composition of the board. Taking into account Art. 1284 of CC (*"[I]f any clause in a contract admits different meanings, it shall be understood in the most appropriate one for it to be effective"*), the DGSJFP concludes that *"if the term "composition" refers to the actual members of the board of directors, the enhanced majority it requires would have to be observed both in their appointment and dismissal"* and this would be contrary to Art. 223.2 of LSC, since it prevents the articles of association from imposing a majority of more than two thirds of the votes for the removal of directors.

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