

legal memo

Barcelona, March 8th, 2021

Significant changes in penalties for failure to comply with the statutory deposit of annual accounts

Royal Decree 2/2021 January 12th is a recent legislative amendment which has extended control on companies failing to comply in time with the obligation to file their annual financial statements with the Companies Registry. Fines for breaching this duty have been increased as well.

The significant changes introduced by RD 2/2021 are the following:

1) The control and sanctioning will be entrusted to the **Companies Registrars** of the domicile of the defaulting company (formerly, this function was vested to the Institute of Accounting and Audits –ICAC-).

2) The penalties, framed within the limits set by article 283.1 LSC range from **€1,200 to €60,000** and up to €300,000, per year of delay, in case of individual or consolidated accounts whenever an annual turnover is above €6,000,000. The sanctions imposed will be determined on the basis of the size of the company, as follows:

- a) The penalty will be **0.5 per thousand** of the total asset value amount, **plus 0.5 per thousand** of the company's **turnover** as they appear in the last tax return filed with the Tax Agency.
- b) The penalty may be increased to **2% of the company's registered share capital**, should the company fail to provide the tax return.
- c) For companies filing the accounts, the maximum ceiling of the fine will be 2% of the registered share capital, **reduced by 10%**. This ceiling will be applied even if the amount resulting from other calculations potentially exceeded that threshold.

Until now, penalties for non-compliance with the account filing obligation have been uncommon. However, the new regulations, by simplifying and attributing to the Registrars the management of the sanctioning regime, suggest a willingness to change this trend.

These financial sanctions add to the closure of the registration sheet in the Companies Registry as long as the non-compliance persists, and to the company's directors' liability for not complying with their duties.

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