

# Practical impact of Spain's new Companies' Act

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The new Spanish Companies' Act was approved by the Spanish Cabinet on Friday, July 2, and published in the Official Gazette on Saturday, July 3. It restates in a single text all the acts previously regulating limited companies, including public limited companies, including specific regulations governing listed companies, private limited companies and limited partnerships with share capital.

Royal Decree 1/2010, approving the Act, complies with the Seventh Final Provision of the Companies Structural Modifications Act, authorising the government to restate the Public Spanish Companies' Act, the Private Spanish Companies' Act, Title X of the Securities Market Act concerning listed companies, and Section 4 of Title I of Book II of the Commercial Code concerning limited partnerships with share capital into a single text.

This new Companies' Act, which will come into effect on September 1, 2010, is therefore the result of regularising, clarifying and harmonising all of these legal texts. The effects of such a wide ranging reform are therefore significant, with the following among the key aspects:

(i) The new Act contains the general legal framework for limited companies, except for the regulations governing structural modifications, which will remain under the Companies Structural Modifications Act. Thus, it provides the general regime for public limited companies (including the special regulations governing listed companies), private limited companies and limited partnerships with share capital;

(ii) With the enactment of this Act, listed companies will now be regulated through two distinct pieces of legislation: the Companies' Act, with its corporate regulations, and the Securities Market Act, which sets out all the other regulations applicable to those companies;

(iii) To make the Act easier to understand, the Companies' Act uses a different approach to presenting the consolidated texts. For example, corporate regulations governing listed companies are set out in a specific section on "listed companies," and the current lengthier articles are subdivided;

(iv) The Companies' Act takes the following approach:

a. divides titles according to subject (from incorporation to wind-up and liquidation of companies), including general regulations that apply to all limited companies and, where necessary, provides for the different corporate types; and

b. regulates three specific titles for start-up companies, Spanish European public limited companies and listed companies;

(v) The Act also extends regulatory

provisions established originally for one type of limited company, by extending rules governing public limited companies to private limited companies and vice versa (eg for general meetings, by-laws amendments or wind-up and liquidation).

Finally, we would like to point out some aspects of the new Companies' Act, which in our view will be of practical relevance:

The Act expressly refers to the concept of corporate group defined in Article 42 of the Spanish Commercial Code. This is relevant because, to date, different legal texts have given different concepts of corporate groups, making the definition complex under Spanish law.

In addition, it establishes that the law governing a controlled company or subsidiary prevails for determining cases of indirect treasury stock (ie acquisition of the controlling company's shares or units). Thus, it clarifies the law applying to cases involving a controlling public limited company and a controlled private limited company, or vice versa.

As regards directors' remuneration, it extends certain rules governing private limited companies to public limited companies. For example, it gives a public limited company's general meeting the authority to establish directors' remuneration on a yearly basis in certain instances, overruling recent Supreme Court decisions considering these expenses non-deductible for tax purposes if not defined in the by-laws.

It also extends certain rules governing the amendment of public limited companies' by-laws to private limited companies (eg using pre-emptive rights only for capital increases with cash contributions, or making it possible for a private limited company to reduce capital stock to institute or increase the statutory reserve or free reserves, which, respectively, received a different treatment and were uncertain under the previous rules).

The new Act allows for provisions in by-laws dealing with voluntary causes of separation of shareholders from public limited companies, which, to date, were only allowed for private limited liability companies.

Finally, it harmonises winding-up and liquidation procedures for all companies, based on the updated regime for private limited companies, applying it to all limited liability companies, whether public or private.



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La nueva Ley de Sociedades de Capital recoge en un solo texto todas las leyes previas que regulaban las sociedades, con previsiones específicas para las cotizadas, las anónimas y las de responsabilidad limitada. Ha sido el resultado de regularizar, aclarar y armonizar ese grupo de textos legales. Los efectos de una reforma tan amplia se notarán de forma significativa, opinan Enric Picanyol e Iñigo Rubio, de Cuatrecasas, Gonçalves Pereira.

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