



## **Company/Commercial - Spain**

### **Legislative and Case Law Update**

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#### **Amendment of the Corporations Act Shareholders' Resolution Annulled**

##### **Amendment of the Corporations Act**

A bill amending the Corporations Act aims to increase the transparency of corporations and reinforce the rights of shareholders.

With regard to shareholders' voting rights, the draft legislation allows a shareholder to send his or her vote by post or email once his or her identification data has been verified.

In addition, the shareholder's right to information is reinforced. The bill allows shareholders to request information from the company directors about matters included in the agenda, and draft questions in writing both before and during the general shareholders meeting.

The company directors' obligation to run the business efficiently will be complemented by the inclusion of duties of allegiance, loyalty and trustworthiness. These obligations are defined in the bill.

Finally, the directors' joint liability established in Article 133(2) of the act will be extended to other private and legal persons.

For further information please see the [Overview \(March 2003\)](#).

##### **Shareholders' Resolution Annulled**

The Civil Bench of the Supreme Court has declared invalid a resolution adopted at the general shareholders meeting of a Spanish company on the grounds that a special public debenture bond of more than €256,000 was omitted from the financial statement. Consequently, the annual accounts did not represent an accurate picture of the company's financial situation.

The company argued that although the debenture bond was omitted from the financial statement, it had been taken into consideration when drafting the report on the agreed final accounting. Further, the special public debenture bonds were not integrated into the financial statement due to considerations which sought to respect the tax law principle of confidentiality. According to that principle, agencies and other intermediary companies that issue special debenture bonds are not required to inform the financial administration of the identity of subscribing persons.

The court dismissed the appeal, stating that the report was incapable of representing an accurate account of the company's financial situation and annual results. Further, the omission of data from the financial statement breached the principle requiring a true and accurate representation of the company.

The Supreme Court held that although the report corresponded to the financial statement, the report lacked the qualities of an accounting document and was not subject to the legal requirements that a financial statement must meet. The decision outlined the principles of acceptable accounting practice:

- truth and accuracy;
- clarity;
- unity (ie, incorporating the whole of the company); and
- continuity (ie, each balance being linked to the previous one).

Accordingly, the court determined that the omission of the debenture bond in the balance infringed the principle of a true and accurate view contemplated by the Corporations Act. In addition, it ruled that the annual accounts must be drawn up clearly, and must accurately portray the company's assets, financial situation and annual results. To this extent tax norms may not influence the legislation applicable to commercial companies.

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