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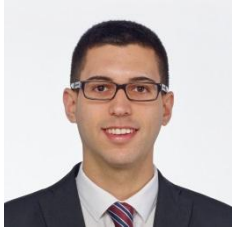
# THE LATEST REFORM ON CORPORATE GOVERNANCE IN SPAIN



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The aim of this article is to point out some of the latest modifications introduced in the Spanish Capital Companies Law ( *"Ley de Sociedades de Capital"*, hereinafter referred to as "CCL") under Law 31/2014 on corporate governance issues, which could be summed up in:

- New requirements to both buy or sell essential assets of a company.
- New rules on contestation of corporate resolutions.
- Reinforcement of Director's duties.

**a) New requirements to both buy or sell essential assets of a company.**

In accordance with article 160.f) of the CCL, as amended, operations in which there are essential assets involved must be subject to the general meeting's approval. A particular asset is considered essential by the current regulation if its value exceeds twenty-five percent of the value of the total amount of assets owned by the company, according to the latest balance sheet approved. However, even if its value does not exceed the above-mentioned percentage, the asset may also be considered essential if its lack prevents the company from normally carrying out the activities in which it is specialized.

As a consequence, the assessment of what is an essential asset for the company turns out to be exceedingly important.

The minimum number of votes required to pass the resolution will depend on whether we are before closed corporations (so-called *"sociedades limitadas"* in Spanish) or public corporations (so-called *"sociedades anónimas"* in Spanish), which is regulated by the articles 198 and 201 of the CCL, respectively. Regarding closed corporations, the resolution must be passed by the majority of votes properly issued, as long as they represent at least one third of the total amount of votes within the company (without taking into account blank votes), whereas public corporations will need a simple majority of votes (more votes in favor than against) by the shareholders who make up the general meeting.

The new regulation does not mention what happens when operations in which there are essential assets involved are carried out without the general meeting's approval. As a consequence of the lack of regulation, our jurisprudence interprets that the operation will not be nullified so as to protect the purchaser in good faith, regardless of the claims against the Directors of the company.

**b) New rules on contestation of corporate resolutions.**

The regulation on contestation of corporate resolutions has been thoroughly modified by Law 31/2014. Among other causes, said Law has established that resolutions could be contested when they have been imposed by the largest owner of shares to the detriment of minority shareholders.

These corporate resolutions, as well as those resolutions that breach the Law or the company's articles of incorporation, may be contested by the Directors of the company, a third party with legal interest, or shareholders who represent at least one percent of the capital, during a period of one year as of the date the resolutions were adopted.

This reform aims to limit the minority shareholder's rights to contest the resolutions of the general meeting by incorporating these restrictions above mentioned, so as to prevent minority shareholders from repeatedly abusing their rights.

**c) Reinforcement of Director's duties.**

Directors are subject to the duty of care and duty of loyalty, but up until the enactment of Law 31/2014, these duties were regulated in general terms without describing exactly what they involved. However, said Law has extensively regulated all the duties that must be observed by the Directors of the company.

Moreover, in case of breach of the duty of loyalty, the Director would have not only to indemnify the company for the damages, but would have to return all the illicit gains he/she obtained.

The responsibility of the Director has also been extended to the Directors in fact, i.e. those people who are carrying out the duties which belong to the Directors or giving instructions to them, without being legally the Director.

Law 31/2014 additionally requires, in the case of the existence of a board of Directors within the company, that they must meet at least once each trimester.

On the other hand, Law 31/2014 has expressly introduced in Spanish Law the so called *business judgment rule,* which means that, in the sphere of strategic and business decisions, it is considered that the Director is diligent if those decisions are made in good faith without any personal interest in the matter.

Finally, said Law has also established a new statute of limitations: claims against Directors will prescribe in four years from the moment the breach was known.