

The Directorate General of Registries and Notaries (DGRN) has reviewed its doctrine as a result of an appeal filed by the agent of four limited liability companies whose attempt to enter his resignation in the Mercantile Register was refused.

In a resolution of 30 January 2012 the DGRN established that, in accordance with what is set forth in the *Mercantile Registry Regulations*, in order to enter the resignation of the office of administrator of a company, the resignation document should be formally communicated to the company under the terms in article 202 of the *Notarial Regulations*.

The DGRN continues to explain that the requirement of formal communication of resignation from the person holding the office of administrator is reasonable given that the purpose of the Mercantile Register is to prevent a situation of absence of leadership in any company, as well as to grant the administrator the right to object to such an entry. It is therefore understandable that the figure of the administrator and the consequences of his resignation should always be protected by certain guarantees given their particular relevance.

Until the date of this resolution, the DGRN had recognised that the requirement for such formal notification was also necessary in the event of the resignation of an agent of the company, under article 1736 of the Civil Code. It was viewed as under the same justification as that of the resignation of an administrator: that the company should be informed of said resignation in order to take the appropriate measures.

In the above case, the joint and several agent of four limited companies resigned his office and asked the executing notary to notify such companies by registered mail with acknowledgement of receipt. The notary sent a copy of the deed to the respective company addresses of each of the companies, all having been returned and stating "Unknown". Upon attempting to enter the resignation in the Mercantile Register, the reason for the refusal of the entry was the absence of receipt by said companies of the resignation notice.

In this situation, the DGRN recognised that despite meeting all necessary requirements for the entry in the register, the entry was unable to be processed. As a result, they realised the doctrine must be reviewed and understood under new terms, as it was impossible to apply the terminology to different situations, as in this case.

Therefore, the DGRN declares that article 147.1 of the Mercantile Registry Regulations is based on the importance and particular situation of resignation of the administrator of a company, but is not similarly applicable to the resignation of an agent of a company. The institutional differences between both positions justify, therefore, their subjection to different requirements.

Finally, the DGRN clarifies that, although formal notification to the principal company of the resignation of an agent is no longer an obligatory requirement, notification is recommended so that the company may take the necessary precautions to prevent potential liabilities.