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DGRN Issues a Resolution on the Statutory Mention of Executive Administrator Remuneration

The Directorate General of Registries and Notaries (DGRN) has issued a resolution regarding the remuneration of the administrators of capital companies following an appeal lodged as a result of the refusal of entry of a statutory clause due to lack of specificity in relation to remuneration paid to board members performing executive duties.

The statutory clause established the remuneration for the administrators "insofar as it is suitable to guarantee proper compensation for their responsibilities…", which the registrar considered, in accordance with article 217 of the *Capital Companies Act*, was not met by this clause with the specificity required.

The appellant provided a detailed defence on the effects of the reform of the *Capital Companies Law* for the improvement of corporate governance insofar as the regime applicable to administrators of capital companies and, more specification, their remuneration.

In light of the situation and accepting the arguments put forward by the appellant, the DGRN has ruled on the new modifications made in regard to the remuneration of administrators of capital companies, as follows:

Two different types of remunerations are identified according to whether it involves an "administrator *per se*" or an administrator with executive duties.

- In the case of "administrators *per se*", the applicable precept is article 217 of the *Capital Companies Act*, which sets forth that the remuneration of such administrators must be defined in the articles of association and the maximum amount must be approved by the General Meeting.
- However, for administrators performing executive functions, the principle of statutory determination is not legally applicable. The applicable precept in this case is article 249 of the *Capital Companies Act* which sets forth the need for a contract to be entered into between the executive administrator and the company, which must be previously approved by the management board with the requirements set forth in the precept and which must include all items for which the director may be paid a remuneration for his executive duties.

Therefore, the latter case involves a separate remuneration situation, arising from an agreement entered into with the management board without any involvement of the general meeting, which opens up the possibility of a director being related with the company in a dual way: i) a basic way whereby he performs the duties inherent to his position and ii) an additional relationship arising from the executive powers that may be delegated to him.

The ruling from the DGRN therefore establishes a distinction between the two types of remuneration to administrators which are regulated by different precepts and have different requirements.