

Resolution of 19 October 2017, of Spanish Parliament, ordering the publication of the resolution for validation of Royal Decree-Law 15/2017, on urgent measures concerning the mobility of economic operators within the territory of Spain

In accordance with the provisions of Article 86.2 of the Spanish Constitution, in its session of 19 October 2017, Parliament resolved to validate Royal Decree-Law 15/2017, 6 October, on urgent measures concerning the mobility of economic operators within the territory of Spain (the Royal Decree).

This Royal Decree entails a measure to facilitate and streamline the transfer of registered offices of companies within the territory of Spain, by means of a new amendment to Article 285.2 of the Spanish Capital Companies Act.

Prior to this Royal Decree, the transfer of registered offices, contained in the bylaws of each company, required approval by its general shareholders' meeting, with the corresponding amendment of the bylaws or, as appropriate, management board, providing the company bylaws contained no provision to the contrary.

The traditional rule on this topic was that the authority for this type of decision corresponded in all cases to the general shareholders' meeting. Nevertheless, Article 105 of the Spanish Mercantile Register Regulations, dated 14 December 1956, already provided that the transfer of the registered offices of the company “within the same city” would not be deemed a bylaw amendment for such purpose. This criterion was enshrined by the legislator when Article 149 of the Spanish Corporation Act attributed its directors with the power to resolve on the transfer of the registered office within the same municipal district. Subsequently, Spanish Act 9/2015, 25 May, on urgent measures regarding insolvency, progressed along these lines by amending art. 285.2 of the Spanish Capital Companies Act, broadening the authority of the management board to changes of

registered offices within Spanish territory (and not just within the municipal district), but restricting this new authority to cases in which the bylaws do not contain a provision to the contrary, namely: “(...) barring a provision of the by-laws to the contrary, the management board will have the authority to change the registered offices within Spanish territory”.

Two years following the approval of this measure, interpretative discrepancies in its application were detected, discrepancies that stagnated the entry of changes in registered offices in the Mercantile Register. A sector considered that the provision in company bylaws indicating that the general meeting had the authority to resolve on the change in registered offices already entailed a “provision contrary” to the authority of the management board, so that only the general meeting could adopt such measure.

Within such context, and to promote the process for geographic mobility of companies and prevent interpretative discrepancies, the Royal Decree now envisages the possibility of the management board to directly approve the transfer of registered offices within Spanish territory, **unless its bylaws expressly indicate that the management board does not have this authority.**

For these purposes, and in accordance with the new wording of Article 282 of the Spanish Capital Companies Act “**it will be understood that the by-laws specify otherwise only when they contain a provision that expressly states that the management board does not have such authority**”. In fact, the single Transitory Provision of the Royal Decree states that a provision in the bylaws to the contrary will only be deemed as existing when, subsequent to the entry into force of the Royal Decree (7 October 2017), a statutory amendment is approved that expressly declares that the management board does not have the authority to change the registered offices.

Consequently, as of 7 October, the management board of the company will have the authority to move the registered offices of a company, unless expressly established to the contrary in the bylaws by means of the corresponding statutory amendment and the authority to do so is attributed to the general shareholders' meeting.

Lastly, and considering the current scenario of corporate geographic mobility (according to recent data from the Land and Mercantile Registrars Association of Spain, close to 1,800 companies have already moved their registered offices outside the autonomous region of Catalonia to cities such as Madrid, Seville or Valencia), this Royal Decree favours and streamlines this mobility.

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