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Reinstatement of the “accounting moratorium”

Royal Decree-law 4/2025, of 8 April, on urgent measures in response to the tariff threat and to relaunch trade (“RDL 4/2025”) has been published in the Official State Gazette (using the Spanish acronym, “BOE”).

RDL 4/2025 aims to address the tariff war recently announced by the US administration and to limit the economic impact it may have on the Spanish economy. The aim is to mitigate the negative consequences of the tariff shock by favouring productive investment, facilitating liquidity and the export activity of the companies affected.

Among the measures adopted is the reinstatement of the “accounting moratorium”, which is regulated in Article 6.

1. Background

As a result of the economic crisis caused by COVID-19, which led to the slowdown or temporary cessation of the activity of many companies during the years 2020 and 2021, successive legal moratoriums on the ground for dissolution due to losses provided for in Article 363.1.e) of the Spanish Companies Act (using the Spanish acronym, the “LSC”) were approved. The aim was to prevent solvent companies from being forced into dissolution and subsequently disappearing for cyclical reasons. To this end, a grace period was granted allowing companies to delay, for the sole purpose of determining the possible existence of this ground for dissolution, the computation of losses for the years 2020 and 2021, so that they would have sufficient time to recover and rebalance their equity imbalance. This grace period has been extended over time by a series of moratoriums.

The last of these extensions was included in Royal Decree-law 9/2024, of 23 December, but due to parliamentary instability it was not validated and its content was therefore repealed by resolution of 22 January 2025 of the Congress of Deputies.

2. RDL 4/2025

As indicated above, RDL 4/2025 reinstates the accounting moratorium as it establishes that *for the sole purpose of determining the existence of the ground for dissolution provided for in Article 363.1.e) of the revised text of the Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July, the losses for the financial years 2020 and 2021 will not be taken into consideration until the close of the financial year beginning in 2025.*

If the losses from 2020 and 2021 are excluded, and the results for the financial years 2022, 2023, 2024 or 2025 shows losses that reduce the net worth to less than half of the share capital, the directors must call a general shareholder’s meeting, or any shareholder may request such a meeting, within two months of the end of the financial year under Article 365 of the LSC in order to dissolve the company, unless the capital is sufficiently increased or reduced.

In relation to the above, and given that in many Spanish companies the financial year coincides with the calendar year and, therefore, the annual accounts should already have been prepared, an extraordinary period is provided for the preparation of the annual accounts for the year 2024 (Sole Additional Provision). Specifically, it establishes the following:

1. *The directors of the company who, on the entry into force of this Royal Decree-law, had already prepared the annual accounts, the management report, which must include, where appropriate, the statement of non-financial information, and the proposed allocation of profits, as well as, where appropriate, the consolidated accounts and management report, corresponding to financial year 2024, may reformulate them within a maximum period of one month from said entry into force, taking into consideration the provisions of Article 6 of this Royal Decree-law.*

In such a case, the general meeting to approve the accounts for the financial year 2024 must be held within three months of the reformulation.

2. *If the notice of the general meeting to approve the accounts for the 2024 financial year was published before the entry into force of this Royal Decree-law and had not been held at that time, the governing body may change the place, date and time scheduled for the meeting or revoke the resolution to call the meeting at least seventy-two hours in advance, either by the procedures for calling the meeting provided for in the Articles of Association or by means of a notice published on the company's website or, if the company does not have a website, in the "Official Gazette of the Commercial Registry". In the event of revocation of the resolution to convene the meeting, the administrative body must call a new meeting within one month after the accounts have been reformulated.*

This allows companies that have already prepared their annual accounts and need to take advantage of the accounting moratorium to prepare them again and also extends the legal deadline for their subsequent approval at the general meeting, as the three-month period for approval starts after the new annual accounts have been prepared. In cases where a general meeting has already been called for the approval of the annual accounts, it is permitted to amend or revoke the resolution to call the general meeting.

3. Entry into force

RDL 4/2025 entered into force on the same day of its publication in the BOE. Notwithstanding the above, as it is a royal decree-law, it will need to be validated within 30 working days of its enactment, as stipulated in Articles 90 and 151 of the Regulations of the Congress of Deputies.

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