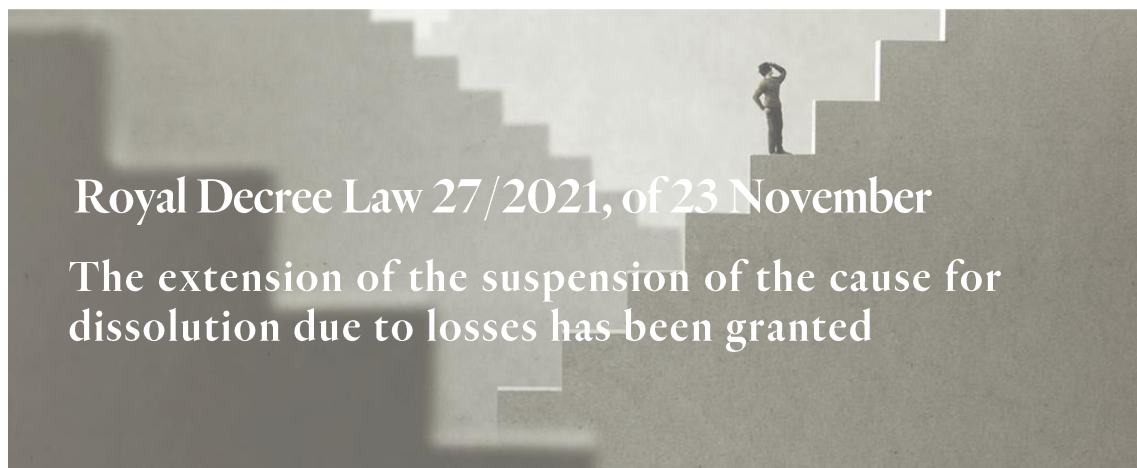


RocaJunyent Reports

Commercial Law Department
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Royal Decree Law 27/2021, of 23 November

The extension of the suspension of the cause for dissolution due to losses has been granted

On 24 November 2021, Royal Decree Law 27/2021, of 23 November (“**RD 27/2021**”), was published in the Official State Gazette, which extended, among other measures, the suspension of the cause for dissolution due to losses provided for in Article 363.1 letter e) of Royal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the Capital Companies Act (“**LSC, Ley de Sociedades de Capital**”).

In particular, Article 363.1.e) of the LSC requires any capital company to dissolve when there are losses that reduce its net equity to less than half of the share capital, unless the latter is increased or reduced to a sufficient extent, and provided that it is not appropriate to request the declaration of insolvency.

The rigidity of this precept was exceptionally attenuated with the entry into force of Law 3/2020, of 18 September, on procedural and organisational measures to deal with COVID-19 in the area of the Administration of Justice (“**Law 3/2020**”). This provision was approved precisely to mitigate the economic effects caused by COVID-19 on the Spanish business network by implementing measures aimed at providing support to all affected companies.

Thus, as a temporary and exceptional measure, Law 3/2020 introduced that for the sole purpose of determining the existence of the cause of dissolution provided for in Article 363.1.e) of the LSC, the losses for the 2020 financial year would not be taken into account, expressly indicating that, where there were losses in 2021 that reduce the net equity to an amount lower than half of the share capital, the directors would be obliged to convene a general meeting in order to proceed with the dissolution of the company, if said situation is not remedied through a sufficient increase or reduction of the capital.

In the current context, the persistence of the pandemic in the European setting and the vulnerability of companies during the incipient recovery phase have made it necessary to extend some of the exceptional measures approved in Law 3/2020.

Thus, RD 27/2021 has extended the suspension of the cause of dissolution due to losses (initially limited to losses produced in fiscal year 2020), to the losses of fiscal year 2021.

In other words, for the purpose of determining whether or not a company is in dissolution due to losses, **the losses for fiscal years 2020 and 2021 may not be taken into account.**

In this sense, the directors' obligation to convene a General Meeting in the terms indicated above is postponed to fiscal year 2022, provided that losses occur in said fiscal year that would reduce the net equity to an amount less than half of the share capital.

Therefore, companies with a net equity of less than half of the share capital, as a result of the losses suffered during the pandemic (i.e. fiscal years 2020 and 2021) will not be obliged to dissolve, which constitutes a measure aimed at continuing to support the companies in our country, which continue to fight to reverse the effects of COVID-19.