

**January 2021**

**Commercial Law Department**

**AN ESTATE ACTING AS SHAREHOLDER**

A new resolution of the General Directorate for Legal Certainty and Public Trust (Dirección General de Seguridad Jurídica y Fe Pública, "DGSJF"), dated 10 December 2020, has recently been published. It rules on certain agreements adopted by the board of directors of a company limited by shares appointing, by co-option, as director and chairwoman of that body, the representative of the estate of a deceased shareholder, who had also been chairman of the board.

Among other reasons, the registrar suspended the recording of these agreements because, in his view, the appointment of the director by co-option was not the appointment of a shareholder.

However, the DGSJF upheld the appeal on this point and decided that the director appointed had the capacity to be so because her appointment as a director had been approved at the board meeting, since she was the representative of the common estate, who had the status of shareholder.

The decision itself clarifies that, in cases where the shares form part of an undivided legacy, it must be taken into account that, according to the doctrine of the Supreme Court, it is the common estate, and not every co-heir, who holds the status of shareholder. It also points out that, regarding exercising the shareholder's rights in the actions forming part of the common estate, Article 126 of the Law on Capital Companies applies. Under this, in the event of co-ownership, the co-holders must designate a single person to exercise those rights by responding jointly and severally before the company for all obligations arising from that status.

Regarding the appointment of a person to exercise the rights of a company member, DGSJF states that it will be governed by the rules of the common estate, so that if an executor or an administrator for the legacy has been appointed (either by the testator or judicially), it will be up to the latter to exercise member rights regarding the company. Otherwise, they shall be designated by the majority of shares or interests.