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Commercial Law Department

"CREATE AND GROW" LAW

On 19 October Law 18/2022, of 28 September, whose main aims are to assist company creation, promote their growth and combat late payment in commercial transactions, shall generally come into force.

Exceptionally, all references to crowdfunding platforms shall come into force from 10 November onwards, and certain measures against commercial late payment will have a specific timetable.

1.- Measures to assist business creation

The new Law's most significant measure is reducing to 1 euro the minimum share capital for the incorporation of limited liability companies, and at least 20% of any profits must be allocated to the legal reserve, until that reserve and the capital add up to 3000 euros (the former minimum capital). Where the liquidation of the company's patrimony is insufficient to cover its obligations, members shall be jointly and severally liable for the difference between the capital amount and 3000 euros.

This establishes a regime similar to that currently governing limited liability companies of successive foundations, which shall be repealed, and, likewise, the regulations of the New Business Limited Companies.

As an attempt to assist the incorporation of limited companies, the "Create and Grow" Law also imposes on Notaries and other business process intermediaries the obligation to provide information about the advantages of using the Entrepreneur Service Points (*PAE*) and the fully telematic processing system of the Information Centre and Business Incorporation Network (*CIRCE*).

Entrepreneur Service Points are defined as offices belonging to public and private bodies (including notaries and commercial registers) as well as virtual points, aimed at providing information and the telematic processing of applications leading to company incorporation.

Regarding the Incorporation Network, the procedures for incorporating companies are specified by means of a public deed with a standardised format, allowing definitive incorporation within a period of 24 hours, and it is specified that registration in the Official Gazette of the Commercial Register will be exempt from fees. Notaries must also be available in the Notarial Electronic Agenda.

The new Law also expressly allows civil societies without a commercial structure to be registered in the Commercial Register, thus clarifying that this registration constitutes their means of publicity.

It also creates the status of Beneficial and Public Interest Companies, which are defined as those capital companies that voluntarily include social and environmental objectives in their articles of association.

2.- Measures to promote business growth

The catalogue of activities exempt from having a prior activity licence is expanded and the regulations on market unity are amended. Among other measures, the creation of the Sectoral Conference for Regulatory Improvement and the Business Climate, whose main aim is promoting the regulatory changes necessary to eliminate obstacles to market unity, should be highlighted.

3.- Measures to combat late payment

The "Create and Grow" Law imposes on entrepreneurs and professionals the obligation to issue and send electronic invoices (establishing a transitional period for compliance by small companies).

In an attempt to combat late payment in the business sphere, the State Observatory of Private Late Payment is given a new role, and the duty to provide information regarding the paid invoices of companies that do not submit abbreviated annual accounts is strengthened. They will have to provide information about average payment periods to suppliers as well as about the number of invoices paid in a shorter period than the maximum allowed by law. The guarantee mechanisms regarding payment collection for invoices from subcontractors in the field of public sector contracts are reinforced and having no delays in making payments is imposed as a condition for accessing subsidies.

4.- Measures to improve access to finance

The Law also sets measures aimed at improving some funding channels to promote business growth and establishes a new legal regime for crowdfunding platforms.

The latter allow contact between a plurality of people (natural or legal) to offer funding with others requesting it to allocate it to a project. They shall now be able to provide their services freely throughout the territory of the European Union, provided they are authorised in Spain.

Crowdfunding service providers may invest funds on behalf of the investor. An individual investment limit per project is set for retail investors (between 1000 euros

or 5% of the capital, not including property and pension funds). Over this amount they shall receive a risk warning and must give their express consent. An investment limit of 5 million euros per project is also imposed, above which issuing a prospectus is required.

Furthermore, shares in limited liability companies are considered to be securities suitable for conducting the activities of certain investment businesses and crowdfunding, the latter may also group investors in a limited liability company holding the shares, in an entity subject to the supervision of the Spanish National Securities Market Commission or in other commercial entities that are usually used for these purposes in other EU Member States.

5.- Measures to promote the venture capital industry

The "Create and Grow" Law also introduces modifications to boost the Spanish venture capital industry, recognising the legal concept of what is called debt funds. This shall allow venture capital entities to invest in debt instruments, reducing the initial disbursement of venture capital companies from 50% to 25% of the committed capital and allowing the incorporation of management companies of collective investment entities in the form of limited liability companies.

Finally, the Law allows obligated subjects regarding the prevention of money laundering and the financing of terrorism belonging to the same category, to create shared information and storage systems and, where appropriate, access to the information and documentation compiled for compliance with their obligations.