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Publication of the CREA and CRECE Law

The Law 18/2022, of 28 September, on the creation and growth of companies (the "**Law**"), was published today in the Official State Gazette ("**BOE**") and will enter into force, on a general basis, twenty days after its publication in the BOE.

The Law seeks to improve the business climate by boosting business creation and growth through the adoption of measures to speed up the creation of businesses, the enhancement of regulations and the removal of obstacles to the development of economic activities, as well as the reduction of commercial delinquency, and the facilitation of access to financing. Under the new legislation, (i) the existing regulation is amended to allow the incorporation of limited liability companies with a share capital of 1 euro; (ii) reforms are introduced to facilitate and promote the incorporation of this type of company quickly and electronically, through the *Centro de Información y Red de Creación de Empresas* ("**CIRCE**"); (iii) the use of electronic invoicing is promoted among entrepreneurs and professionals; and (iv) measures are included to strengthen the instruments for financing business growth, making alternative financing mechanisms such as crowdfunding, collective investment and venture capital more user-friendly.

This Legal Briefing will analyse the key aspects of the measures contained in the Law.

1. Measures to speed up the creation of businesses

Section II of the Law amends the Consolidated Text of the Companies Act (using its Spanish acronym, the "**LSC**") to set the minimum capital for the incorporation of limited liability companies at 1 euro. This measure involves the elimination of a company's option of incorporation under the successive formation regime, as this system allowed the incorporation of limited liability companies with a share capital of less than the legal minimum of 3,000 euros.

In addition, for limited liability companies that are incorporated with a share capital of less than 3,000 euros, two specific rules are introduced to safeguard the interests of creditors¹:

- (a) they must allocate at least 20% of the profit to the legal reserve until the sum of the legal reserve and the share capital reaches the amount of 3,000 euros; and
- (b) in the event of liquidation, if the company's assets are insufficient to meet the company's liabilities, the shareholders shall be jointly and severally liable for the difference between the amount of 3,000 euros and the amount of the subscribed capital.

The use of the CIRCE electronic processing system and the *Documento Único Electrónico* (using its Spanish acronym, "**DUE**") is also promoted, establishing, among others, the obligation for notaries and other intermediaries who advise and participate in the incorporation of limited liability companies to inform the founding shareholder of the advantages of using the *Punto de Atención al Emprendedor* (using its Spanish acronym, "**PAE**") and the CIRCE².

Finally, Title XII of the LSC concerning new business limited companies is repealed.

¹ It should be noted that one of the main functions of share capital is to provide a minimum guarantee for creditors, given the general impossibility for creditors to take action against shareholders to collect their debts owed by the company.

² CIRCE already allows the electronic incorporation of limited liability companies, with the exception of the notarial procedure. However, with the forthcoming transposition of Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019, fully electronic incorporation via CIRCE will be possible.

2. Measures to combat commercial delinquency

This Law promotes the widespread adoption of electronic invoicing by amending Law 56/2007, of 28 December, on Measures to Promote the Information Society, expanding the obligation to issue and send electronic invoices to all business people and professionals in their commercial relations. Furthermore, the Law establishes that the minimum interoperability requirements between providers of technological solutions for electronic invoices, the technical and information requirements to be included in electronic invoices and the systems that process them for calculating the date of payment and determining companies' average payment periods will be established by regulation.

Smaller companies will have a transitional period of two years to implement mandatory electronic invoicing following the approval of the regulation, while large companies³ will have one year.

In addition, incentives for meeting payment deadlines are included, both by making them a criterion for access to public subsidies and by strengthening public procurement rules to ensure that contractors pay the price agreed with subcontractors on time.

3. New legal regime for crowdfunding platforms

Section V of the Law introduces a new legal regime for crowdfunding platforms (using their Spanish acronym, "PFPs"), adapting Spanish law to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European providers of crowdfunding services for companies ("**Regulation (EU) 2020/1503**"). The most noteworthy new features of this regime are as follows:

- (a) It provides PFPs that comply with Regulation (EU) 2020/1503 the option to provide their services on a cross-border basis at the European level.
- (b) The creation of the *Ficha de Datos Fundamentales de la Inversión* (using its Spanish acronym, "FDFI"). This seeks to provide potential investors with all the information required by Article 20 of Regulation (EU) 2020/1503 on the equity financing offer, to be prepared by the promoter itself and delivered with each investment offer.
- (c) The introduction of "individualised loan portfolio management" services to allow equity finance service providers to allocate at their discretion a pre-determined amount of a client's capital to one or more projects, in accordance with and within the limits agreed through the individualised mandate given by the client. In such cases, the platform shall prepare and make available to investors the *Ficha de Datos Fundamentales de la Plataforma* (using its Spanish acronym, "DFFP").
- (d) The various forms of investor groups are set out, including the option of using other forms commonly used for these purposes in other EU Member States.

4. Collective Investment and Venture Capital

Finally, Section VI of the Law introduces a series of reforms aimed at boosting and improving collective investment and venture capital:

³ According to Final Provision Eight of the Law, these will be companies with an annual turnover of more than 8,000,000 euros.

- (a) Firstly, we wish to highlight one of the most widely awaited amendments, which we believe will be received with great interest, not only by the private equity market but also by private banking professionals and the financial sector in general. The Draft amends the current Article 75.2 of Law 22/2014, making the regime for non-professional investors in Spanish venture capital entities more flexible. Thus, as an alternative to the 100,000 euro initial investment requirement, once the regulation comes into force, the marketing of venture capital vehicles to non-professional investors will be permitted, provided that they access the investment through the recommendation of an entity authorised to provide the advisory service, with a minimum initial investment of 10,000 euros and, furthermore, that it does not represent more than 10 percent of the client's financial assets if this does not exceed 500,000 euros.
- (b) The Draft introduces new concepts that until now had no place in the Spanish legal system, such as debt funds. The new regulation of these funds establishes additional obligations and requirements for management companies to set up debt funds, aimed at guaranteeing adequate credit risk management. It also introduces the option for venture capital funds to invest in debt instruments, and for these instruments to form part of their mandatory investment coefficient.
- (c) Another concept that is expressly recognised in this Law is that of the European Long-Term Investment Funds (also known as "**ELTIFs**") which, despite being regulated at the European level, were not recognised in the Spanish legal system.
- (d) Regarding management companies, both those of collective investment undertakings (using their Spanish acronym, "**SGIICs**") and those of closed-end collective investment undertakings (using their Spanish acronym, "**SGEICs**"), the regulation provides for the first time the option for them to operate as limited liability companies.
- (e) Another noteworthy innovation is the broadening of the range of assets eligible for investment by venture capital institutions to include financial institutions whose activity is mainly based on the application of technology to new business models, applications, processes or products as eligible assets for investment. It also amends and streamlines the investment diversification regime for Venture Capital Institutions in order to bring it into line with international standards and practices in the sector.
- (f) The amendment to the initial disbursement for Venture Capital Companies reduces it from 50 percent to 25 percent of the committed capital. This measure is consistent with the approach envisaged for Venture Capital Funds and is better adapted to the corporate governance and operational structure that a company requires.

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