

Corporate & Commercial

# Structure and content of the Company Creation and Growth Act 18/2022 of 28 September

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Company Creation and Growth Act, electronic invoicing, measures to remove obstacles to the carrying out of economic activities, delinquency reduction.

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**T**he Official Journal of Spain of 29 September 2022 published the Company Creation and Growth Act 18/2022, of 28 September, with the aim, as stated in Article 1, of improving the business climate by promoting business creation and growth through the adoption of measures to speed up the creation of companies; improve regulation; remove obstacles to the carrying out of economic activities; reduce commercial delinquency and improve access to financing.

To this end, a considerable number of new measures are set out that entail important amendments to many of the laws in force in our legal system.

The content of the Act, which consists of seventeen articles grouped into six chapters, thirteen additional provisions, six transitory provisions, one repealing provision and eight final provisions, is summarised below.

### CHAPTER I General provisions

This chapter consists only of *Article 1*, which, under the title *Purpose of the Law*, describes the objectives it pursues, as described at the beginning of this paper.

### CHAPTER II Measures to speed up the creation of companies

In order to speed up the creation of companies, Articles 2 to 5 introduce a series of measures and amendments to enable the creation of private limited companies with a share capital of 1 euro and to facilitate and encourage the creation of companies through CIRCE (online company formation system).

## **Article 2. Amendment of the recast version of the Companies Act, approved by Royal Legislative Decree 1/2010 of 2 July**

- a) *Article 4* ("Minimum share capital"): the minimum capital for the formation of private limited companies is set at EUR 1 and rules are introduced to safeguard the best interest of creditors when the share capital is less than EUR 3,000.
- b) The scheme for private limited companies without a minimum capital requirement is abolished with the deletion of *Article 4bis* ("Companies without a minimum capital requirement") and the fast-track private limited company also disappears with the repeal of *Title XII* and the *fourth, fifth and sixth additional provisions*.
- c) In accordance with the above paragraphs, the wording of *Article 5* ("Prohibition of capital below the authorised minimum") and *Article 23* ("Articles of Association") are amended.
- d) *Eighth additional provision* ("Calculation of the average supplier payment period"): A reference to Act 3/2004 is included, in relation to the dates of receipt and commencement of the invoice payment period.

## **Article 3. Information obligations on those involved in the formation of private limited companies**

This article regulates the obligations of notaries and intermediaries with regards to informing

the founders in the process of setting up private limited companies about the advantages of using PAEs (points of single contact for entrepreneurs) and CIRCE and other formalities related to the commencement of the business activity.

## **Article 4. Electronic Notarial Diary**

This article regulates the obligation for all notaries to be available in the National Electronic Agency and to be available for the incorporation of companies through CIRCE, having to justify, if necessary, the refusal to carry out any incorporation procedure in this way.

## **Article 5. Amendment of the Entrepreneur Support and Internalisation Act 14/2013 of 27 September**

- a) *Article 8* ("Effectiveness of the limitation of liability"); *Article 9* ("Commercial public disclosure of the limited liability entrepreneur"); *Article 10* ("Public disclosure of the limitation of liability in the Land Registry and in the Registry of Chattels"): are amended to regulate the limitation of liability, together with the habitual residence, of the productive equipment used for the operation and those that replace it, duly identified in the Registry of Chattels.
- b) *Article 13* ("PAEs"); *Article 15* ("Incorporation of private limited companies by standard-format deed with standard articles of association"); *Article 16* ("Incorporation of private limited companies by standard-format deed without standard articles of association") and *Article 22* ("PAE services on the occasion of cessation of business"): registries of companies are included as PAEs and changes are included regarding the procedure to acquire such status, through an administrative procedure that will be regulated by means of a ministerial order.

In addition, the procedures for the incorporation of companies are regulated in more detail and the use of the CIRCE system is improved. In relation to the incorporation of private limited companies without standard articles of association, the use of a standard-format deed is established in order to speed up the procedure, the period within which the registrar must definitively register the deed of incorporation in the registry of companies is reduced and it is specified that its publication in the Official Journal of the Registry of Companies will be exempt from the payment of fees.

### CHAPTER III

#### **Better regulation and removal of obstacles to economic activities**

Articles 6 to 8 included in this Chapter III contain measures with the objective of improving regulation for the conduct of economic activities and the elimination of obstacles to such conduct, adopting criteria of best economic regulation - under constant review - necessity, effectiveness, proportionality, legal certainty, transparency and efficiency.

#### **Article 6. Amendment of the Market Unity Guarantee Act 20/2013 of 9 December**

- a) *Article 2* ("Scope of application"), which excludes tax matters from the scope of this law.
- b) *Article 4* ("Principle of cooperation and mutual trust"); *Article 5* ("Principle of necessity and proportionality of the competent authorities"); *Article 9* ("Guarantee of the freedoms of economic operators"); *Article 17* ("Implementation of the principle of necessity and proportionality"); *Article 18* ("Actions limiting freedom of establishment and freedom of movement"): changes are included to deepen cooperation and mutual trust between the different General Governments, the principle

of extraterritorial effects of regional decisions is introduced when there are equivalent standards of improvement and references to the "principle of national effectiveness" are eliminated, the principle of necessity and proportionality and the actions limiting freedom of establishment and freedom of movement are detailed.

- c) *Article 10* ("Sectorial Conference for Regulatory Improvement and the Business Climate"); *Article 11* ("Functions of the Secretariat for Market Unity"); *Article 12* ("Cooperation in the framework of sectorial conferences"); *Article 13* ("Information to the Government's Economic Affairs Delegate Committee"); *Article 14* ("Cooperation in the drafting of bills"); *Article 15* ("Periodic assessment of legislation"): the mechanisms for cooperation between General Governments are reinforced, in particular in the drafting of bills, establishing a system through which the analysis of these bills is reinforced in the Sectorial Conference.
- d) Deleted: *Article 22* ("Integration of information held in sectorial registers"); *Article 23* ("Electronic information exchange system"); *Article 24* ("Exchange of information in the exercise of supervisory functions") and *Article 25* ("Exchange of information for overriding reasons of public interest").
- e) *Article 26* ("Procedure in defence of freedom of establishment and movement by the competent authorities"); *Article 27* ("Legal standing of the Spanish Markets and Competition Authority"); *Article 28* ("Additional mechanisms for eliminating obstacles or barriers detected by economic operators, consumers and users"); new *eleventh additional provision* ("Time limit for requisitions prior to applying for judicial review"): the mechanisms for the protection of operators are improved, extending standing to any citizen and in particular to

consumer and user organisations, which can lodge complaints without the need to be interested parties, improving transparency, and reinforcing the points of contact that operators can use to complain, introducing clarifications and modifying some deadlines. The reinforcement extends to the informal mechanism for removing obstacles or barriers, allowing the Secretariat for Market Unity to initiate it on its own initiative or at the request of other market unity points of contact.

- f) *First* ("State actions"); *second* ("Regulated products"); *fifth* ("Popular action and right of petition"); *sixth* ("Legislative assessment of market unity") and *ninth* ("Creation of the Observatory of Best Regulatory Practices") additional provisions: the ninth additional provision stands out with the creation of an Observatory of Best Regulatory Practices within the framework of the Sectorial Conference for Regulatory Improvement and the Business Climate.
- g) *Fourth final provision* ("Jurisdictional authority"): this includes the sections of the law that are not of a basic nature and apply exclusively to the Central General Government and the state public sector.
- h) *Points (b), (c) and (f) of the Schedule*: the definitions of Economic activity, Competent authority and Authorisation or licence are amended.

#### **Article 7. Amendment of the Judicial Review Jurisdiction Act 29/1998 of 13 July**

- a) *Article 127ter(6)*: adjustments to the procedure for ensuring market unity are included.
- b) *Article 127quater(1) and (2)*: the application for judicial review that may be made by the Spanish Markets and Competition

Authority (CNMC) against any general provision or action by any competent authority that is considered to be contrary to freedom of establishment or movement is amended.

#### **Amendment of the Liberalisation of Trade and Certain Services (Urgent Measures) Act 12/2012 of 26 December 2012**

The catalogue of economic activities exempt from authorisation is extended.

#### **CHAPTER IV Measures to combat delinquency in commercial transactions**

This chapter, in articles 9 to 13, includes measures for the fight against commercial delinquency, incorporating incentives for compliance with payment deadlines and the promotion of the use of electronic invoicing.

#### **Article 9. Amendment of the Measures to Combat Delinquency in Commercial Transactions Act Amendment Act 15/2010 of 5 July**

- a) *Article 2* ("Monitoring of the evolution of delinquency and results of the effectiveness of the law"): the report on the situation of payment periods and delinquency in commercial transactions to be drawn up by the National Observatory on Private Delinquency is regulated.
- b) *Third additional provision* ("Duty of information"): obligation for all commercial companies to indicate in their annual reports the average payment period for their suppliers. It regulates the information to be provided by listed and unlisted companies that file unabridged accounts, both the average payment period and the number of invoices paid in a period lower than the maximum established in the legislation on delinquency.

**Article 10. Amendment of the Public Procurement (Transposing Directives 2014/23/EU and 2014/24/EU of 26 February 2014 into Spanish law) Act 9/2017 of 8 November**

*Article 216(4)* ("Payments to subcontractors and suppliers") and *Article 217* ("Verification of payments to subcontractors or suppliers") are amended to ensure that successful tenderers pay the price agreed with subcontractors on time, and to regulate the provisional withholding of the definitive guarantee in the event that the subcontractor or supplier takes action against the main contractor for payment of invoices in contracts subject to harmonisation and those whose estimated value is equal to or greater than two million euros. It also regulates the imposition of penalties on the contractor when non-payment of invoices is proven in certain cases.

**Article 11. Amendment of the Subsidies Act 38//2003 of 17 November**

- a) A new *subarticle 3bis* is added to *Article 13* ("Requirements to obtain the status of beneficiary or collaborating entity") and *subarticle 4 of Article 13* is amended to include compliance with the payment deadlines set out in Act 3/2004 as a criterion for access to public subsidies of more than EUR 30,000.
- b) *Amendment of Article 31(2)* ("Eligible costs"): eligible costs incurred by companies receiving subsidies must be paid within the deadlines laid down in the applicable rules.

**Article 12. Amendment of the Information Society (Promotion Measures) Act 56//2007 of 28 December**

*Article 2bis* ("Electronic invoicing in the private sector"): the obligation to issue and send electronic invoices is extended to all employers and self-employed professionals in their commercial relations. Smaller companies will have a transitory

period of two years from the approval of the implementing legislation, while large companies will have to do so within one year from the approval of the aforementioned legislation.

**Article 13. Amendment of the Unfair Competition Act 3/1991 of 10 January 1991, on Unfair Competition.**

*New Article 15(4)* ("Violation of rules"): repeated non-compliance with the rules on combating delinquency in commercial transactions is considered unfair.

**CHAPTER V**

**Legal regime for crowdfunding platforms**

This chapter - Articles 14 and 15 - includes measures to strengthen the instruments for financing business growth, making alternative financing mechanisms more flexible.

**Article 14. Repeal of Title V of the Business Financing (Promotion) Act 5/2015 of 27 April**

This article shall be repealed with effect from 10 November 2022.

**Article 15. New Title V of the Business Financing (Promotion) Act 5/2015 of 27 April**

The new Title V, under the heading ("Legal regime for crowdfunding platforms") gives a new wording to the following articles: 46 ("Legal regime for crowdfunding platforms harmonised by EU law"); 47 ("Authorisation of crowdfunding platforms by the CNMV"); 48 ("Registration"); 49 ("National competent authority"); 50 ("Collaboration with other competent authorities"); 51 ("Key investment factsheet"); 52 ("Key platform factsheet"); 53 ("Infringements for breach of obligations under Regulation (EU) 2020/1503"); 54 ("Sanctioning regime"), 55 ("Legal regime for non-harmonised crowdfunding platforms") and 56 ("Pooling of investors").

Spanish legislation is adapted to the legal regime established at the European level (Regulation (EU) 2020/1503 on European crowdfunding service providers for business), so that platforms authorised in Spain can provide their services freely throughout the European Union.

The regime for crowdfunding platforms harmonised by EU law is regulated, strengthening investor protection. A new “portfolio management” category is included for the crowdfunding service provider to invest funds on behalf of the investor. The investment thresholds per project are raised from EUR 2 million to EUR 5 million and the investment limits per project for retail investors are modified to the higher of €1,000 or 5% of wealth.

Crowdfunding platforms that are not harmonised by EU law are also regulated.

Shares in private limited companies are considered eligible securities for the carrying out of the activities of the crowdfunding platforms and investment firms envisaged in the Regulation and it is expressly included that these platforms may create and pool investors in a private limited company, whose corporate purpose and sole activity consists of holding the shares of the company in which the investment is made or in an entity subject to supervision by the Spanish Securities Market Authority (CNMV).

## CHAPTER VI Promoting and enhancing collective investment and private equity

A set of measures are introduced in Articles 16 and 17 that seek to boost and improve collective investment and private equity in Spain.

### Article 16. Amendment of the Collective Investment Schemes Act 35/2003 of 4 November

a) *Article 17* ("Informative documents"); *Article 18* ("Information to unitholders and shareholders,

to the general public and public disclosure"): the mandatory quarterly report is eliminated and telematic means are provided for as the default form of communication with unitholders and shareholders.

- b) *Article 22bis* is deleted.
- c) *Article 40(1) and (2)* ("Concept, corporate purpose and reservation of activity and name"); *Article 43(1)* ("Conditions for taking up the activity"): the category of European long-term investment funds (ELTIFs) is included and it is established that both SGICs (collective investment management companies") and managers may be public limited companies or private limited companies.

### Article 17. Amendment of the Private Equity, other Closed-Ended Collective Investment Entities and Closed-Ended Collective Investment Management Companies (Regulation) and the Collective Investment Schemes (Amendment) Act 22/2014 of 12 November

- a) New *Article 4bis* ("Closed-ended collective investment entities for loans: the so-called debt funds are included").
- b) Amendment of *Article 5* ("Scope of application"), *Article 42* ("Conditions for taking up the activity"), *Article 43* ("Ancillary services") and *Article 85* ("Scope") and new *Articles 40bis* ("Legal regime for European long-term investment funds (ELTIFs)") and *74bis* ("Conditions for taking up and pursuing the activity of SGEICs managing European long-term investment funds"): the necessary references relating to European long-term investment funds (ELTIFs) are added to the Spanish legislation.
- c) *Article 9* ("Main activity"): the main purpose of private equity includes investment in financial institutions whose activity is mainly based on the application of technology to new busi-



ness models, applications, processes or products.

- d) *Article 13* ("Mandatory investment ratio in Private Equity Entities"), *Article 14* ("Investment in Private Equity Entities"), *Article 16* ("Group limitations and diversification of investments"), *Article 17* ("Temporary non-compliance with the diversification ratio"), *Article 18* ("Eligible assets and other limits on investments") and *Article 23* ("Group limitations and diversification of investments by Private Equity Entities-SMEs"): the diversification regime for investments by Private Equity Entities is made more flexible in order to bring it into line with international standards and practices in the sector.
- e) *Article 21(3)* ("Mandatory investment ratio in Private Equity Entities-SMEs"): the requirement for Private Equity Entities-SMEs to have a maximum of 250 employees is relaxed to 499 employees.
- f) *Article 26(3)* ("Definition and legal regime"): the initial disbursement of private equity firms is reduced from 50 per cent to 25 per cent of the committed capital.
- g) *Article 41* ("Concept and corporate purpose"): the possibility of setting up closed-ended SGEICs in the form of limited liability companies is allowed.
- h) *Article 75* ("limits on marketing of Private Equity Entities and Closed-Ended Collective Investment Entities"): as an alternative to the requirement of EUR 100,000 initial investment, marketing to retailers will be allowed provided that they access the investment through the recommendation of an entity authorised to provide the advisory service, with a minimum initial investment of EUR 10,000 and, in addition, that it does not exceed the client's financial assets if the client's financial assets

do not exceed EUR 500,000.

- **ADDITIONAL PROVISIONS**

**First.** Promotion of a standard ordinance for the carrying out of retail commercial activities and the provision of services.

**Second.** Promotion of the signing of a collaboration agreement with the CNMC for the implementation of the mechanisms of Articles 26, 27 and 28 of the Market Unity Guarantee Act.

**Third.** Quarterly reports to be made available to notaries through CIRCE, specifying for each notary the number of appointments received through the Electronic Notarial Agenda.

**Fourth.** Compilation of statistics on the use of CIRCE and set-up times.

**Fifth.** Standard-format deed of incorporation of private limited companies.

**Sixth.** Incorporation of private limited companies entirely by telematic means through CIRCE from the entry into force of the legislation transposing Directive (EU) 2019/1151.

**Seventh.** References to the Sectorial Conference for Regulatory Improvement and Business Climate and to the Secretariat for Market Unity.

**Eight.** Registration (optional) in the Registry of Companies of business partnerships that do not take on a commercial form.

**Ninth.** Work to promote the creation of social economy entities through CIRCE.

**Tenth.** The category of Common Benefit and Interest Companies is recognised as those companies limited by shares that voluntarily decide to include in their articles of association (a) their commitment to the explicit generation of positive social and environmental impact through their activity; (b) their submission to greater transparency and accountability in the fulfilment of the aforementioned objectives. They will be subject to regulatory implementation.

**Eleventh.** Amendment of RD 962/2013 so that the State Council for SMEs includes representatives of associations specialised in the field of delinquency.

**Twelfth.** Measures to enable information from the registry of companies to be provided in an open format that allows it to be downloaded and processed.

**Thirteenth.** Legal measures allowing for changes to the reference price system.

- **TRANSITORY PROVISIONS**

The transitory arrangement is regulated in relation to the following issues:

**First.** Proceedings initiated in the area of market unity.

**Second.** Private limited companies without a minimum capital requirement.

**Third.** Fast-track private limited companies.

**Fourth:** Crowdfunding services provided in accordance with the Business Financing (Promotion) Act.

**Fifth.** Continued existence of agreements for the establishment of PAEs.

**Sixth.** Functions of the Market Unity Council.

- **SINGLE DEROGATORY PROVISION**

Repeal of all provisions of equal or lower rank that oppose the provisions of this law with the exception of Title V of Act 5/2015, which shall be repealed with effect from 10 November 2022.

- **FINAL PROVISIONS**

**First.** New wording of Article 3(d) of the *Payment and Securities Settlement Systems Act 41/1999 of 12 November* and deletion of Article 11(3).

**Second.** Amendment of the following articles of the *Money Laundering and Terrorist Financing Prevention Act 10/2010 of 28 April*: Article 2(3) ("Obligors"); Article 12(1) (a) ("Business relationships and non-face-to-face transactions"); Article 32 ("Personal data protection"), new Article 32ter, Article 33 ("Exchange of information between obligors and centralised fraud prevention files"), Article 44(2)(d) ("Money Laundering and Monetary Offences"); Article 45(5) ("Support bodies for the Money Laundering Prevention and Monetary Infringements Committee") and Article 61(7) ("Proceedings for the imposition of penalties and provisional measures").

**Third.** Amendment of the *Credit Institutions ("Unified Regulation, Supervision and Solvency") Act 10/2014 of 26 June*: Article 5 ("Protection of clients of credit institutions and letter x") of Article 92 ("Very serious infringements"). A new subarticle 4 is added to Article 13 ("Opening of branches and provision of services without a branch in Spain by credit institutions head quartered in a non-EU Member State") and a new subarticle 8 is



added to *Article 29* ("Corporate governance system").

**Fourth.** Jurisdictional authority

**Fifth.** Basic nature: The amendments to *Article 14(4)*, *Article 15* of Chapter III and the sixth additional provision of Act 20/2013 are not of a basic nature and apply exclusively to the Central General Government and the state public sector.

**Sixth.** Creation and regulation of the National Observatory on Private Delinquency.

**Seventh.** Regulatory implementation. The regulatory implementation of the technical and information requirements to be

included in electronic invoicing should be highlighted.

**Eighth.** Entry into force: twenty days after its publication, with the exception of: (i) *Chapter V* ("Legal regime for crowdfunding platforms") which will enter into force from 10 November 2022 and (ii) *Article 12*, relating to electronic invoicing between employers and self-employed professionals, which will come into effect, for employers and self-employed professionals whose annual turnover exceeds eight million euros, one year after the regulatory implementation referred to in the seventh final provision has been approved. For all other employers and self-employed professionals, it shall come into effect two years after the regulatory implementation has been approved.