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New requirements regarding non-financial information to be included in the annual accounts

Law 11/2018, amending the Code of Commerce, the Law on Companies and the Law on the Auditing of Accounts

Background

Law 11/2018 substantially amends the obligations regarding non-financial information to be included in annual accounts. The objective of this new regulation, which transposes an EU Directive into Spanish law, is to improve the transparency of large companies and their corporate groups in order to provide investors and stakeholders with a better understanding of their organization, business and impact on society.

Entry into force

The new regulation will apply for financial years initiated on or after 1 January 2018. Therefore, when, during the first quarter of 2019, companies start formulating their 2018 annual accounts, they will have to take into account these new requirements regarding non-financial information.

Subjects under obligation

The new regime increases the number of subjects under the obligation to include non-financial information in their annual accounts. Whereas before this legal modification only public interest entities had the obligation to disclose non-financial information, under the new regulation many more companies have to do so. Under the new legal framework, subjects under the obligation to disclose non-financial information are:

1. Public-interest entities exceeding (they alone or with their groups) the average number of 500 employees during the financial year; and
2. Entities exceeding (they alone or with their groups) the average number of 500 employees during the financial year, and exceeding, at the closing of two consecutive financial years (that is, for 2018 annual accounts, financial years 2017 and 2018), at least two of the following criteria: (a) balance sheet total: €20M, (b) net turnover: €40M, and (c) average number of employees during the financial year: 250.

Subjects under the obligation to disclose non-financial information will no longer be obliged to do so if they cease to meet any of the abovementioned requirements during two consecutive financial years.

From 1 January 2021 on, the number of subjects under the obligation to disclose non-financial information will be increased even more.

As from such date, subjects under obligation will be:

1. Public-interest entities exceeding (they alone or with their groups) the average number of 250 employees during the financial year and not being small or medium-sized companies. For this purpose, small or medium-sized companies must be those which on their balance sheet dates do not exceed the limits of at least two of the three following criteria: (a) balance sheet total: €20M, (b) net turnover: €40M, and (c) average number of employees during the financial year: 250.

2. Entities exceeding (they alone or with their groups) the average number of 250 employees during the financial year; and exceeding, at the close of two consecutive financial years, at least one of the following criteria: (a) balance sheet total: €20M, and (b) net turnover: €40M.

Non-financial statement

The new regulation increases and specifies the content of the non-financial information to be disclosed.

Likewise, the new regime requires a greater level of accuracy, comparability and verifiability of the disclosed information to facilitate its understanding and interpretation.

In general terms, the non-financial information to be disclosed shall contain information to the extent necessary for an understanding of the company's (and, if it is the case, its group's) development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.

More precisely, the new standard includes a list, classified by areas, stating the non-financial information to be disclosed.

Among the newly added requirements, there is an obligation to disclose "details of current and foreseeable impacts of the company's operations on the environment", "actions taken to ensure gender equality", "instruments in place to fight corruption and bribery"; and a "country-by-country report containing information on profits made".

Finally, aiming to improve transparency, the new regulation eliminates the option not to disclose information related to matters which are upcoming or in the course of negotiation and that, in the duly justified opinion of directors, are seriously prejudicial to the commercial position of the company.

Approval and publicity

The non-financial statement must be submitted to the annual shareholders' meeting as an independent document or included in the management report; and must be approved by the shareholders' meeting together with the remaining documentation that comprises of the annual accounts.

The approval of the non-financial statement must be included in the agenda of the shareholders' meeting as a separate item.

The non-financial statement must be made publicly, freely and easily available, within six months after the balance sheet date, on the company's website. Such non-financial statement must remain published for at least five years.

Verification

The report of non-financial information should be evaluated by the company's auditor and an "independent assurance services provider".

The company's auditors, as provided by the Law on the Auditing of Accounts, should only check that the non-financial statement has been provided, without having to verify if there is any inconsistency or incorrectness therein.

The new independent assurance services provider must go one step further and "verify" the content of the non-financial statement.