

## **JOINT STATEMENT ISSUED BY THE REGISTRARS ASSOCIATION OF SPAIN AND THE SPANISH NATIONAL SECURITIES MARKET COMMISSION IN RELATION TO ANNUAL ACCOUNTS AND THE PROPOSED DISTRIBUTION OF PROFIT OF CORPORATE ENTITIES IN THE CONTEXT OF THE HEALTH CRISIS RESULTING FROM COVID-19**

26 March 2020 (updated at 17h30)

Article 253 of the Spanish Corporate Enterprises Act requires the company's directors to issue the annual accounts, the management report (including the NFS) and the proposal for the distribution of profit/allocation of loss within the first three months of the financial year.

Article 260(20) of this same Act stipulates that the content of the notes to the annual accounts, which form part of the individual annual accounts, shall include at least the following: "the proposal for the distribution of profit/allocation of loss". Furthermore, Article 160(a) of the Spanish Corporate Enterprises Act provides that the approval of the annual accounts, the distribution of profit/allocation of loss and the approval of the company's management shall be adopted at the general shareholders' meeting.

Even though neither Article 253 nor Article 160 require the issue of the financial statements by the board or the approval at the general shareholder's meeting of all these matters simultaneously, this is a standard practice.

However, the scenario arising from the COVID 19 health crisis is a completely extraordinary situation which normally has not been taken into account by corporate entities.

In the context of this extraordinary situation, the Registrars Association of Spain and the Spanish National Securities Market Commission consider that entities may, among other alternatives, choose from the following:

1.- If considered necessary by the board of directors, entities shall restate the annual accounts (ACs) and modify the proposal for the

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distribution of profit/allocation of loss (PDP) included in the notes to the annual accounts, so that the ACs contain the latest PDP to be submitted to the shareholders' meeting (it should be noted that Article 38(c) of the Spanish Commercial Code requires the restatement in certain cases, for risks arisen between the date of issue of the annual accounts and the date of general shareholders' meeting, and that the changes in the PDP could be a result of the risk stemmed from Coronavirus). This is also the view of the Resolution of the Spanish Accounting and Auditing Institute (ICAC), of 5 March 2019, in its Article 25, "Restatement of accounts".

If the general shareholders' meeting were already convened, the restatement of the accounts would require calling off the meeting by reason of force majeure. Regarding the calling off of the meeting after the state of alarm in respect of those meetings already convened, please see Article 40(6) *in fine* of Spanish Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to confront the economic and social impact of COVID-19 (RDL 8/2020). The said provision is applicable to listed and non-listed entities.

2.- Without reaching the restatement of the ACs, which will not be automatically necessary just for the mere fact of having to adapt the PDP to the situation arising from the health crisis and may be particularly burdensome since it will require a restatement and a new audit of the accounts, entities that have not yet convened their general shareholders' meeting may substitute the PDP contained in the notes to the ACs with an alternative proposal adjusted to the health crisis scenario arising from COVID-19, to be approved by the board of directors. This new proposal of the board of directors, which shall be the one to be submitted to the general shareholders' meeting, shall justify the new context and the recent changes arising from the economic and health circumstances, and shall be accompanied by a statement issued by the registered auditor indicating that the amendment would not have changed its audit opinion if he had been aware of the new PDP at the time of its signature.

In respect of listed entities, the new proposal and the auditor's statement shall be published as supplementary information to the annual accounts upon approval, on the entity's website and on the CNMV's website as "Other Relevant Information (ORI)", or where appropriate, as "Inside Information (II)".

3.- In the case of entities that have convened their general shareholders' meeting, the board of directors may also choose to

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propose the deferral of the decision on the PDP contained in the convening of the meeting to a subsequent meeting scheduled within the legal deadline established for holding the general shareholders' meeting (extended deadline under Spanish RDL 8/2020).

Unlike entities that have not convened the general shareholders' meeting, in the case of meetings already convened, only the deferral of the decision on the PDP is permitted due to the proxies and the votes already conferred or granted in favour of the proposal referred to in the notice. The notice convening the new meeting may include a PDP different from that of the first meeting. The purpose of the deferral of the decision is precisely to enable its adaptation to the new context.

This option shall also be subject to the same justification requirements, the statement of the registered auditor and the disclosure referred to in the section above. The decision on the deferral shall be published prior to the constitution of the meeting called and the supplementary information shall be published before the new meeting is called for this purpose.

From an accounting perspective, the net accounting profit shall offset losses or shall be recognised as retained earnings (Retained earnings, account 120 of the item "Profit pending distribution/loss pending allocation" of the Spanish National Chart of Accounts). With regard to the filing of accounts, the certificate issued by the board of directors shall state the non-approval of PDP (please see Article 378(5) of the Companies Registry Regulation on the certification of the non-adoption of corporate resolutions).