

Circular 7/ 2015

Online authentication of the statutory books of business owners

Barcelona, 6 March 2015

Dear Client,

Article 18 of Law 14/2013, of 27 September, which provides support for entrepreneurs and their internationalisation, already introduced the obligation of online authentication, by the Companies Register, of all of the statutory books that business owners must keep pursuant to applicable legal provisions, once these have been completed in an electronic medium.

This regulation has not been the object of implementation until publication in the Spanish Official Gazette, on 16 February, of the Instruction of 12 February 2015, from the Directorate-General for Registries and Notaries, on the authentication of business owners' books, which regulates a single and uniform procedure for the authentication of statutory books belonging to all kinds of business owners.

Here, it is important to remember that the wording of article 18 of Law 14/2013, of 27 September, sets out that the books subject to authentication through the new online system referred to in the aforementioned article, and in the Instruction mentioned in this informative note, are no longer solely those books that we have been considering thus far as official books. The obligation now extends to **all books that business owners are obliged to keep in accordance with applicable legal provisions** (and which are not the object of specific authentication in accordance with the corresponding sector-wide regulations). By way of example, in the commercial area, the Books of Minutes, the Record of Shareholders or of Nominative Shares and the Book of Contracts with the Sole Shareholder. In this regard, a list of

the books that may be the object of authentication is shown under letter 'A' of Appendix I of the aforementioned Instruction, which is attached hereto.

KEY DEVELOPMENTS:

The key developments to bear in mind are as follows:

(i) **The completion** of books that business owners are statutorily obliged to keep (natural and artificial person) pursuant to the applicable legal provisions must be filled in **using an electronic format** and submitted to the Companies Register for **online authentication, and its authentication** by the Companies Register shall also be carried out online.

(ii) In general, the deadline for presenting books to the Companies Register for authentication shall be **four months from the date of the corporate year-end**. However, in the case of the Records of Shareholders or Nominative Shares, once the company has been registered with the Companies Register a book shall be authenticated placing on record the initial share ownership of the founding partners and it shall then only be obligatory to authenticate a new book within four months following the end of the financial year in which there has been a change in the ownership of equity units or shares or if any encumbrances have been set up over these shares.

(iii) All statutory **books for years that commence after 29 September 2013** shall be subject to **online presentation**.

(iv) There is the possibility, **at any time** during the corporate year, of **authenticating** books with details of minutes using **minutes from the current year for evidentiary purposes** or of any other nature, without prejudice to the mandatory inclusion of these minutes in the Book of Minutes for the entire year. This will allow us to authenticate the existence and content of certain minutes during the year in progress, without having to wait until the end of the year and authentication of the book corresponding to all of the minutes of the year in question.

(v) Bound **books that are blank and already authenticated may only be used for minutes of financial years opened prior to 29 September 2013**. Once this final corporate year has ended (the one that opened prior to 29 September 2013), these books shall be closed with the relevant stamp of acknowledgement. This closure must be substantiated, in the first online sending of books to be carried out, with the inclusion of a file that includes certification from

the Governing Body which, for the purposes of the provisions set out in articles 334.2 of the Companies Register Regulations and 18.3 of Law 14/2013, of 27 September, places on record that the bound books that have already been legalised have been closed.

(vi) If minutes from a previous year have been transcribed after 29 September 2013 into these blank books already legalised, the book in question shall be closed in the same way as referred to previously, and these minutes will be transferred to the new book, which must be completed using an electronic medium and sent online to the Companies Register for authentication. **By way of an exception**, for years that commence after 29 September 2013 and which close up until 31 December 2014, **providing, on reasoned grounds, it is not possible to present the books online, the registrar will allow presentation in hard-copy format**. Here, it is appropriate to remember that it will be up to the Companies Register to consider and assess whether there are good reasons.

(vii) Unlike what happened with hard-copy books, **books of minutes** for a specific year may be the object of authentication **without the book corresponding to the immediately previous year or years being authenticated**, or the record of nominative shares or of shareholders, even if the initial book has not been authenticated.

(viii) **Companies which, since their incorporation, have not authenticated their book of minutes**, of shareholders, of nominative shares or of contracts between the sole shareholder and the company, **may include all of the minutes and vicissitudes of the company in the first books** of these classes submitted online, **from the date of incorporation through to the date of closure**.

(ix) The electronic medium must comply with the technical requirements concerning the format and content of files specified in the foregoing Instruction. For these purposes, the online processing platform of the Association of Registrars for online sending is the website www.registradores.org.

(x) The foregoing developments shall also apply for the authentication of joint ventures, community property regime, associations of any kind, foundations or other natural or artificial persons obliged to keep books in accordance with the regulations of the Commercial Code, unless there are regional regulations (in the autonomous community) with specific legislation in this regard.

As always, we remain at your disposal for any clarification concerning this circular. In addition to the professionals who regularly collaborate with your company, you may also contact **Óscar Casanovas, Mateu Lázaro, Rosa María Gil or Maite Gordo.**

Best regards,
AUDICONSULTORES

The sole and exclusive purpose of this circular is to provide its addressees with selected content providing general information on employment, tax-related or legal developments and issues, without this in any way constituting professional advice or being sufficient for taking personal or business decisions.

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