

Note

Amendment of Articles 348a and 276 of the
Capital Companies Act (Ley de Sociedades de Capital)

17th December 2018

On 30 December 2018, Law 11/2018 came into force, amending, among others, Articles 348bis and 276 of the Law on Capital Companies (hereinafter "LSC").

Regarding the amendment of article **348bis LSC**, relating to the right of separation for non-sharing of profits, the main new features introduced in this article are as follows:

1. The dispositive character of the rule is explicitly established, allowing to include in the Articles of Association of the Company, the suppression or modification of the right of separation of the partner recognized in the referred article 348bis, being necessary that the agreement relative to such suppression or modification is approved with the consent of all the partners, unless the right to separate from the company is recognized to the partner who has not voted in favour of such agreement.
2. The shareholder must state in the minutes of the Ordinary General Meeting his protest against the insufficiency of the recognised dividends.
3. The minimum percentage of dividend to be distributed to satisfy the minority shareholder's right is reduced to 25% of the profits obtained during the financial year. Previously, the minimum percentage of dividend to be distributed was 1/3 of the profits inherent in the exploitation of the corporate purpose. However, the possibility is foreseen that the distribution of said minimum percentage may be fulfilled during the cycle of the last five years. Thus, the right of separation will not apply if, despite the fact that during a financial year the distribution had not been agreed, the calculation of the previous five years has entailed a weighted distribution of 25% of all the profits existing during the same.
4. The need is established for a period of three years to obtain social benefits, including all types of distributable benefits, that is, extraordinary or exceptional benefits, deleting the previous reference made in the article to "benefits inherent in the exploitation of the corporate purpose".
5. In addition, the new wording of Article 348a also typifies a specific rule for companies required to prepare consolidated accounts. In this case, the same right of separation must be recognised for the shareholder of the parent company if the general meeting of these companies does not resolve to distribute as a dividend at least 25% of the consolidated profits attributed to the parent company from the previous year, provided that they are legally distributable and, in addition, consolidated profits attributed to



the parent company have been obtained during the previous 3 years, without any other additional requirement.

6. Finally, the cases excluded from the scope of the rule are extended to the following:

- i. In the case of listed companies or companies whose shares are admitted to trading on a multilateral trading system;
- ii. When the company is in bankruptcy;
- iii. When, under insolvency law, the company has brought to the attention of the competent court for the declaration of its insolvency the initiation of negotiations to reach a refinancing agreement or to obtain adhesions to an early agreement proposal, or when the court has been notified of the opening of negotiations to reach an out-of-court settlement of payments.
- iv. When the company has reached a refinancing agreement that satisfies the conditions of recordability laid down in the insolvency law.
- v. In the case of Sports Corporations.

On the other hand, the reform has also modified the literal wording of article **276 LSC** relating to the time and form of payment of dividends.

Article 276 LSC establishes that, in the absence of a determination by the General Shareholders' Meeting of the time and method of payment of the dividend, the dividend shall be payable at the registered office from the day following that of the resolution.

However, the amendment has added to said premise the existence of a maximum period of 12 months for the full payment of the dividends to be distributed from the date of the resolution of the General Shareholders' Meeting. This is the only, but not insignificant, amendment that Law 11/2018 has made to the wording of the precept.

Finally, in relation to the transitional regime of Law 11/2018 amending the articles analysed, it is established that these reforms will be applicable for financial years starting from 1 January 2018.

By way of exception, with regard to the amendments to article 348bis LSC, these shall apply to general meetings held on the same day as its entry into force, i.e. 30 December 2018.

For more information please contact:

[Carlos Salinas](#)

carlos.salinas@AndersenTaxLegal.es

[Sara Rovira](#)

sara.rovira@AndersenTaxLegal.es