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Remuneration of Executive Directors in Unlisted Companies

The remuneration system for directors, particularly for those serving as executive directors, has been and remains a subject of controversy. Evidence of this lies in the differing criteria between case law and the doctrine of the Directorate-General for Legal Security and Public Faith (DGSJFP).

The Supreme Court, in its controversial Judgment 98/2018 of February 26—one that left no one indifferent—defined the scope of the reform introduced by Law 31/2014, of December 3, regarding Articles 217 (statutory provision and shareholder approval of the maximum remuneration amount) and 249 (requirement for a contract approved by a two-thirds majority of the board, with the affected party abstaining) of the Spanish Companies Act (LSC).

The Supreme Court opposed the stance held by the DGSJFP, which maintained that there was a general remuneration regime for directors (Article 217 LSC) and a special regime applicable to executive directors (Article 249 LSC). According to the DGSJFP, the remuneration system for executive directors fell outside the scope of Article 217 LSC and was therefore subject solely to Article 249 LSC.

In its ruling, the Supreme Court took a different position, stating that both regimes must be applied cumulatively rather than alternatively. In other words, the general regime established in Article 217 LSC applies to all directors, including executive directors. Consequently, their remuneration must be regulated in the company's bylaws, be subject to the maximum annual amount set by the shareholders' meeting for all directors, and be reflected in a contract, which must be approved by a two-thirds majority of the board and detail all the compensation elements they receive for performing executive functions.

Moreover, regarding executive directors, the Supreme Court advocated for a less rigid interpretation of the statutory provision requirement to allow for the adaptation of their remuneration to the changing demands of companies and economic activity while ensuring appropriate shareholder protections. However, the judgment did not define the limits of this proposed flexibility.

Against this backdrop, in which registry doctrine has gradually aligned with the Supreme Court's stance, the DGSJFP's Resolution of June 4, 2020 (BOE No. 206, July 30, 2020, 8802), relying on this flexibility, allowed the registration of a statutory clause providing for alternative remuneration systems for executive directors. It confirmed that company bylaws may refer to the contract between the executive director and the company to specify whether they will be remunerated for all or only some of the remuneration components outlined in the bylaws, without requiring their modification.

Recently, the DGSJFP has ruled three times on the statutory determination of executive directors' remuneration. The Resolution of October 21, 2024 (BOE No. 281, November 21, 2024, 24307) introduced a novel approach to the required level of detail in statutory clauses regarding executive directors' variable remuneration. It rejected the following wording: "a variable

remuneration, according to general reference indicators or parameters." While this wording exactly reproduces Article 217(2) (d) LSC, the DGSJFP concluded that the article requires specifying the exact indicators or reference parameters, although it also stated that they should be interpreted flexibly.

In another Resolution of October 21, 2024 (BOE No. 281, November 21, 2024, 24308), the DGSJFP examined a statutory clause stating that, for executive directors, the remuneration components to be received annually by directors will be determined by the general shareholders' meeting and will consist of one or more of those specified in the bylaws. The DGSJFP deemed the clause valid, as it referred only to executive directors and not to all directors.

In a subsequent Resolution of October 30, 2024 (BOE No. 282, November 22, 2024, 24423), the DGSJFP assessed a statutory clause stating that "the remuneration of executive directors may consist of (...)". The Registrar rejected its registration, arguing that remuneration cannot be optional ("may consist of...") but must be unconditional. According to the Registrar, the clause should not leave it to the shareholders' discretion to choose between one or more of the remuneration components listed, nor should it suggest that the position could be remunerated or unpaid, as the phrase "may consist of" seems to imply. However, the DGSJFP ultimately allowed the registration of the disputed clause.

It is also worth mentioning the Madrid Provincial Court's Judgment 311/2024, of October 4, which confirms the lack of a unanimous criterion in this matter. Contrary to the DGSJFP's position, the Provincial Court ruled that if the position of CEO is unpaid, the executive director is not required to sign a contract with the company. In the Court's view, the justification for requiring a contract under Articles 249(3) and (4) LSC is specifically the existence of remuneration for executive functions.

In conclusion, recent developments in this area highlight the need to establish a clear, unified, and consistent approach shared by case law, doctrine, and registry practice, with the ultimate goal of ensuring greater legal certainty in Spain's corporate landscape.

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Per diem regime in the context of directors

The Central Economic-Administrative Court (TEAC) recently ruled, in Resolution 1475/2024 of January 30, 2025, that directors cannot benefit from the per diem regime outlined in Article 9 of the Personal Income Tax Regulation (RIRPF) regarding remuneration received for performing their corporate functions. However, they may benefit from this regime for per diems arising from their employment relationship with the company.

The TEAC had to determine whether the tax exemption for per diems and travel expenses under Article 9 RIRPF applies to directors of legal entities or whether, on the contrary, this exemption is only applicable to employment or statutory relationships that exhibit dependency, subordination, and external control.

This resolution originates from a tax assessment issued by the Tax Administration against a company that had paid its director—who also held 70% of the company's share capital—annual remuneration classified as employment income, as well as amounts declared tax-exempt by the company under the concept of per diems and travel expense allowances.

Traditionally, the Tax Administration has considered that the tax exemption for per diems under Article 9 RIRPF applies only to income categorized under Article 17.1 of the Personal Income Tax Law (LIRPF)—natural employment income—because these are the only cases where dependency, subordination, and external control exist.

The remuneration of directors and corporate administrators, on the other hand, could not benefit from the per diem regime under the IRPF regulations because they fell under the regulatory framework of Article 17.2 of the same law (specifically, under Article 17.2.e LIRPF), which refers to remuneration established by legal mandate. Historically, the Tax Administration has argued that such remuneration does not meet the criteria of dependency, subordination, and external control.

However, the TEAC diverges from this administrative interpretation and upholds the Supreme Court's ruling of June 20, 2022, which clarified that this historical differentiation was not as absolute as previously interpreted. The Court recognized that some types of remuneration, even though legally classified under Article 17.2 LIRPF, could still meet the conditions of dependency, subordination, and external control.

According to the TEAC, the objective of the IRPF regulations regarding per diems is strictly compensatory: they are intended solely to exempt employees from expenses incurred due to business-related travel requirements. To justify the existence of such expenses, the Supreme Court, in a ruling dated July 22, 2021, stated that there must be a "correlation between necessary expenses and trips undertaken."

Despite previous interpretations, the TEAC notes that the reference in Article 9 RIRPF to the exemption of per diems paid to an "employee or worker" prevents its application to per diems received by directors in their capacity as such. Therefore, "if the director receives remuneration solely for their corporate role without being an employee, they will not be entitled to apply Article 9 RIRPF," meaning that all per diems received will be subject to taxation.

Conversely, if the director is also an employee of the company, the tax exemption for per diems cannot be denied, nor can it be argued that the corporate relationship overrides the employment relationship (the so-called "link theory"). In such cases, it is necessary to "consider the remuneration paid independently."

From this, it follows that the origin and cause of per diems must be analyzed in each case to determine whether they qualify for the exemption under Article 9 RIRPF as employment-related remuneration.

Additionally, from the perspective of the employer—the legal entity—it will be crucial to provide evidence that amounts paid to directors as per diems and travel expenses are genuinely work-related (and not related to administration duties). In this regard, concerning who bears the burden of proving the validity of travel expenses, the Supreme Court, in a cassation ruling to establish jurisprudence (STS 426/2025 of February 4, 2025), has stated that the Tax Administration must seek evidence from the employer, as it is the entity responsible for substantiating the claims, rather than from the individual employee.

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Digital Evidence: LinkedIn Screenshots as *Irrefutable Proof*

In today's legal landscape, technology is redefining how evidence is collected and presented. A recent case from the Madrid High Court of Justice (Ruling of December 19, 2024, EDJ 2024/814890) highlights this shift, demonstrating the increasing judicial recognition of the evidentiary value of information obtained from social networks. Specifically, this ruling underscores the acceptance of LinkedIn profile screenshots as decisive evidence in a lawsuit concerning the violation of a non-compete agreement.

Case Background

A recruitment specialist, employed under a permanent contract with a monthly salary of €1,926, signed a non-compete clause valid for 12 months following termination. This clause explicitly prohibited competition with the company, the hiring of its employees or clients, and any similar activity within the specified geographical area.

After her dismissal, the employee accepted a position at a human resources consulting firm whose activities were significantly similar to those of her former employer. This overlap in professional activities led the company to file a lawsuit, arguing a clear breach of the non-compete agreement.

The Digital Evidence

The employer presented various pieces of evidence, including the employee's résumé (in English, without an official translation) and, crucially, screenshots of her LinkedIn profile. These screenshots clearly displayed her new job responsibilities, including recruitment, talent management, and other tasks that directly conflicted with the terms of the non-compete agreement.

This case is particularly significant because the court unreservedly accepted the screenshots as irrefutable proof. Digital evidence, often debated regarding its admissibility in legal proceedings, became a central element of the company's argument, proving its evidentiary value. The Madrid High Court of Justice, in upholding the lower court's decision, not only validated the use of these screenshots but also emphasized the defense's failure to challenge this evidence during the trial. This lack of objection, combined with the clear correlation between the job functions described on LinkedIn and the restrictions of the non-compete clause, was decisive in the ruling in favor of the employer.

The court's decision sets a significant precedent by explicitly recognizing the growing probative value of information obtained through social networks. The easy accessibility and unchangeable nature of digital records on professional platforms like LinkedIn are revolutionizing the collection and analysis of evidence in labor disputes.

Conclusion

The ruling of the Madrid High Court of Justice marks a turning point in the evaluation of digital evidence by fully accepting LinkedIn screenshots as key evidence in a labor dispute. This decision not only legitimizes the use of information from social media but also reflects how digitalization is reshaping the way facts are proven in court.

The impact of this ruling extends beyond the specific case, as it paves the way for increased scrutiny of professional activity online. Both employees and companies must be aware that their digital presence can be used either against or in their favor in legal disputes. This precedent reinforces the need for a strategic and cautious approach to digital platforms while solidifying their role as sources of evidence in the modern era.

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The Single Seasonal Rental Registry: New Regulations for Short-Term Rentals in Spain

The rise of tourism and the widespread use of short-term rental platforms like Airbnb have created the need to regulate this market in Spain. To enhance transparency, oversight, and compliance with tax and administrative regulations, the Single Seasonal Rental Registry has been established—a new regulation set to take effect in July 2025. This measure is the result of Royal Decree 1312/2024, issued on December 23 and published in the Official State Gazette (BOE) on December 24, 2024, with a progressive implementation starting on January 2, 2025.

What is the Single Seasonal Rental Registry?

The Single Seasonal Rental Registry is a mandatory digital system where property owners renting out properties for short-term or seasonal stays must register their units. This platform, known as the Digital One-Stop Rental Window, aims to centralize data related to seasonal rentals (including short-term contracts, room rentals, tourist apartments, and boat rentals), ensuring that landlords comply with Spain's legal and tax obligations.

The implementation of this registry responds to the growing demand for clear regulations in a market that has largely operated informally. Through this system, both owners and tenants will have access to a database that verifies the legality of rental properties and the conditions under which they are offered.

Registration Process

The process to register a property in the Single Seasonal Rental Registry is straightforward and consists of three main steps:

1. **Accessing the digital system** – The property owner must obtain a registration number by accessing the platform managed by the College of Registrars. Once registered, they can manage their property's information.
2. **Completing the registration form** – The owner must fill out a detailed form with information about the rental property, including its location, type of accommodation, and specific rental conditions.
3. **Submitting required documentation** – The registration process requires official documents such as the property title, energy certificate, and, depending on the location, a tourist license or other specific permits. This ensures that the property meets legal and safety standards.

Legal Obligations for Landlords

With the implementation of this new regulation, landlords must comply with various legal requirements to operate legally in the short-term rental market. These include:

- **Compliance with local regulations** – Properties must adhere to urban planning, safety, and accessibility rules set by local authorities, which may require additional permits and licenses.
- **Declaring rental income** – Landlords are required to declare the income earned from short-term rentals and meet their tax obligations, including paying taxes on rental earnings.
- **Licenses and permits** – Depending on the location and type of property, a tourist license or other permits may be necessary to certify that the rental meets short-term rental requirements.

These obligations are designed not only to ensure that rental properties are safe and legal, but also to formalize the market, requiring landlords to comply with their tax duties.

Penalties for Non-Compliance

Failure to comply with the Single Seasonal Rental Registry regulations can result in serious consequences for property owners, including:

- **Fines** – Property owners who fail to register or meet tax obligations may face financial penalties, with fines depending on the severity of the violation.
- **Operational restrictions** – Non-compliant landlords could face limitations on their ability to offer short-term rentals, negatively affecting their business.
- **Revocation of licenses** – In cases of serious or repeated violations, authorities may revoke licenses or permits, effectively banning the property from being used as a short-term rental.

For this reason, it is crucial for landlords to stay informed about local and national regulations and to fully comply with legal requirements to avoid penalties and maintain their reputation in the market.

Conclusion

The Single Seasonal Rental Registry is a key tool in regulating Spain's short-term rental market. This new regulation seeks to create a more transparent, secure, and efficient system for both landlords and tenants. Property owners must adapt to these regulations, register their properties in the system, and comply with tax and administrative obligations to avoid fines and operate legally.

With the implementation of this system, Spain positions itself as a leader in short-term rental regulation, following European Union guidelines. It is essential for property owners to stay informed about any regulatory updates and to be prepared to meet new legal requirements. Compliance is crucial to ensure the sustainability and growth of a well-managed and transparent rental market.

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Criminal Liability of Executives and Senior Management: Disqualification and Compliance

The recent Supreme Court ruling STS 121/2025, dated February 13, has addressed a case that is not common in the Second Chamber: a crime against worker health and safety and injuries resulting from a workplace accident. Beyond the core legal issues discussed in the ruling, this article focuses on the penalty imposed on the company's General Manager. In addition to a prison sentence—avoidable through the benefit of “suspension”—the court also imposed a disqualification from holding the position of General Manager for the same duration as the prison sentence, which in this case was one year and six months.

In cases involving crimes such as the one mentioned, the most significant consequence for a convicted individual may not necessarily be the prison sentence itself, as there are mechanisms in place to prevent its execution. Instead, unexpected restrictions on rights can have a major impact, particularly when they prevent the convicted individual from exercising their profession, trade, or position.

For senior management, the issue arises when the prosecution takes an expansive approach, arguing that the disqualification should apply broadly to all managerial and executive roles, not just to positions related to workplace health and safety. While it is reasonable to argue that the restriction should be limited to the specific area of the offense, courts often extend the penalty to include the broader managerial role, as seen in this ruling.

A disqualification from serving as an administrator or manager does not just deprive an individual of a right—it effectively acts as a financial sanction due to the severe economic damage it can cause. In the best-case scenario, the convicted individual is prevented from carrying out the vast majority of their managerial functions, which typically make up around 90% of their responsibilities.

Preventing This Risk: Compliance as a Key Measure

To mitigate this risk, it is important to remember that while the Occupational Risk Prevention Law designates the Administrator as the responsible party in this area, this does not automatically translate to criminal liability. The specific personal responsibility of the accused must be examined in each case. In this regard, Article 318 of the Penal Code is designed to identify the responsible party within a large organization, stating that liability falls on either the administrator or the person in charge of workplace health and safety. The use of the disjunctive “or” in the law implies that this responsibility can be delegated to a competent individual.

So how can such situations be avoided? The key measure is prevention through the implementation of Corporate Criminal Compliance Programs. This tool helps define the scope of the administrator's responsibility for their own actions and those of subordinates. A well-structured compliance program allows companies to delegate responsibility appropriately to the individuals responsible for a specific function.

For example, organizational charts included in Occupational Risk Prevention Protocols (which can also apply to areas like environmental management) do not always reflect the actual operational structure of a company. Furthermore, it is often evident that those held responsible for workplace safety violations are not truly involved in this highly technical field, which requires specialized knowledge and certification. It is crucial to review and refine organizational charts when they do not accurately reflect real responsibilities.

Compliance as a Protective Mechanism

By implementing an effective compliance program, the risk of liability and conviction can be significantly reduced. While compliance is often seen as a tool for shielding corporations from criminal liability, it is also highly beneficial for individuals within the organization.

A functional organizational analysis helps clarify how decisions are made, implemented, and executed within a company. This aligns with Article 31 bis of the Penal Code, which governs corporate criminal liability, allowing organizations to identify responsibilities, establish safeguards, and delegate duties appropriately.

Criminal liability for the actions of subordinates is not automatically transferred to the administrator. Instead, under the principle of specialization, modern corporate management allows for delegation of responsibility, provided that the delegation is properly structured and documented. The key takeaway is that form must match substance—companies must ensure that their compliance structures effectively reflect the real division of responsibilities within the organization.

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Smart Working in Public Administration

Smart working in Public Administration has been at the center of a long debate in recent years, evolving from an emergency tool during the pandemic to a work model with more structured regulations.

One of the critical points of the 2024 CCNL (National Collective Labor Agreement) is its non-uniform application among different public administrations. While the contract allows for up to 8 days per month of remote work, agencies have broad autonomy in its implementation, leading to significant differences among ministries, local authorities, and other public bodies. Access to remote work is subject to service needs and employee rotation.

The INPS (National Social Security Institute) is one of the most advanced entities in this regard, with more flexible management compared to other ministries. Smart working is used to ensure the continuity of online services, improving citizens' access to them. However, there are differences among regional offices, with some granting more remote workdays than others. These discrepancies often arise even within the same office, between different departments and colleagues.

The Revenue Agency allows access to smart working but only with prior authorization from the manager. This model is more rigid and applies only to certain tasks, while roles that require high public interaction still demand physical presence.

In general, central government agencies acknowledge the value of smart working, but its use remains highly constrained by service needs, making it less accessible than in the private sector.

Smart Working in Local Authorities

In local authorities, the situation is much more fragmented because municipalities and regions have greater autonomy in managing remote work. This results in huge territorial disparities: some entities promote smart working, while others are practically eliminating it.

A geographical analysis highlights these differences between the North and South:

Milan and Turin have adopted more advanced local agreements than the CCNL, granting employees more remote workdays and experimenting with flexible schedules.

Rome and Florence, on the other hand, have taken the opposite approach: despite the CCNL allowing up to 8 days per month, these cities have imposed strong restrictions, significantly limiting access to smart working.

Other regions, such as Emilia-Romagna and Veneto, have introduced more flexible regulations, whereas Calabria and Campania remain more restrictive.

From a Culture of Control to a Culture of Results

One of the most debated aspects of smart working in the new CCNL is the transition from a culture of control to a culture of results.

In the private sector, remote work is often structured around clear objectives, with performance metrics measuring productivity and work quality independent of physical presence in the office. In Public Administration, however, this transformation is still partial and inconsistent.

The traditional management approach, based on rigid schedules and mandatory office presence, does not always enhance autonomy and individual responsibility.

The lack of clear tools for evaluating performance risks nullifying the potential benefits of smart working, reducing it to a mere concession rather than a structured opportunity.

For remote work in Public Administration to truly improve service quality and administrative efficiency, it is necessary to rethink personnel evaluation criteria, introducing digital tools to monitor activities and defining measurable objectives for each employee.

This transition aligns with the introduction of the *metaprocesso*, which aims to standardize and digitize workflow processes.

The “Metaprocesso”: A New Organizational Model

An innovative concept introduced in the debate on smart working in Public Administration is the *metaprocesso*. This organizational model digitizes and standardizes workflows, making productivity less dependent on physical office presence.

The *metaprocesso* is a work management model that leverages advanced technologies and automation to transform how activities are carried out within Public Administration. Its objectives include:

- Reducing bureaucracy
- Improving efficiency
- Ensuring operational continuity, even in a remote work setting

It relies on Artificial Intelligence and Machine Learning to optimize document management and automate repetitive processes. Additionally, it utilizes cloud platforms and collaborative software to allow real-time sharing of files and administrative records.

Other key elements include:

Automated workflows to ensure tasks can be managed remotely without interruptions

Digital performance monitoring to evaluate the effectiveness of smart working and improve productivity without requiring physical office presence

The Benefits for Public Administration

- The adoption of the metaprocesso could bring numerous benefits:
- Greater efficiency – Reducing the time required for administrative processes
- Lower management costs – Thanks to digitalization of documents and procedures
- Better work-life balance – Improving employee well-being and reducing forced relocations

Many newly hired public employees are forced to relocate far from their hometowns due to staff shortages. For example, the average age of candidates in the last INPS recruitment was 35 years old, and many had to move away from their families, with significant economic and personal consequences.

The metaprocesso would allow employees to keep their job in their city, even while being assigned to a different administrative office remotely.

Moreover, greater transparency and traceability in processes would make it harder for information to be lost or mismanaged, ultimately improving public service quality.

Challenges and Next Steps

For the metaprocesso to become fully operational, investments in digital infrastructure, staff training, and a cultural shift in public sector management will be necessary.

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