

CORPORATE SERVICES

THE BASICS OF DECREE-LAW
109-D/2021

VdA EXPERTISE

February 2022



Decree-Law 109-D/2021, of 9 December 2021 (DL 109-D/2021) partially transposes EU Directive 2019/1151 of the European Parliament and of the Council, of 20 June 2019 ("Directive 2019/1151") to the domestic legal order, whose purpose is to enable the use of digital tools and processes across a broad range companies law areas to set up companies and register branches more easily, rapidly and time- and cost-effectively.

Directive 2019/1151 further seeks to encourage Member States to exchange information on companies, among other measures to prevent fraud, document forgery and other abuse, which are preconditions for the effective functioning, modernization, and administrative streamlining of an increasingly competitive internal market in a globalized and digital world.

Partially complying with Directive 2019/1151, DL 109-D/2021 focuses on two aspects in particular:

1. **Setting up a procedure to enable the online registration of branches** (referred to as "*sucursal online*"), notably applicable to companies headquartered in EU Member States; and
2. **Amending other acts**, including the *Código das Sociedades Comerciais* [Companies Code] ("CSC"), notably by introducing the requirement for a declaration of acceptance of the appointment as director.

I. Procedure for the online registration of branches of companies headquartered abroad

DL 109-D/2021 sets up a procedure for the online registration of branches of limited liability companies headquartered abroad.

The online registry, also known as "*sucursal online*", and its functionalities and operating rules, will be accessed through a website to be defined by an Ordinance.

The procedure to register branches online includes the following stages: (i) online application accompanied by the documentation listed in Article 3.2; (ii) validation and assessment of the application by the relevant services, and lastly (iii) if the application is validated, the relevant services must follow the steps listed in Article 5, including promoting the registration of the branch and its representatives within 10 business days from completion of the required formalities.

II. Legislative changes

Besides establishing the procedure for the online registration of branches of companies headquartered abroad, DL ... amends the following acts:

a) CSC (Article 8)

The most salient legislative change introduced is the requirement for a declaration of acceptance of the appointment as director. DL ... introduces new paragraphs 3 and 2 to Article 252 (in the case of limited liability companies by quotas) and Article 391 (in the case of limited liability company by shares), respectively, which require submitting a document attesting to the appointment as directors for registration purposes. Such document must include: (i) a declaration of acceptance of the appointment as director, and (ii) a declaration where the directors state they are not aware of any circumstances that could disqualify them. Where not included in the document appointing the directors, such declarations may be made in a separate document, to be submitted for registration purposes.

The remaining legislative changes introduced to the CSC - notably to Article 425.5 and Article 435.2 - were limited to bringing them in line with the amended Articles 252 and 391 of the CSC.

b) Commercial Registry Code (Article 9)

DL 109-D/2021 amends in particular Article 40 by introducing a new paragraph 3. In accordance with the amendments to the CSC, the new paragraph 3 introduces, for the purposes of appointment of the branches' representatives, the requirement of a declaration of acceptance of such appointment.

Article 78-D of the Commercial Registry Code has also been amended. It now requires the collection of personal data of those subject to registration, namely their ID number and e-mail address (if provided).



- c) Decree-Law 125/2006 (*Empresa Online*) [Online Registration of Companies] (Articles 11, 13 and 15)

Article 6 of the DL relating to the *Empresa Online* [Online Registration of Companies] is amended so as to require the submission of a declaration of acceptance of the appointment as director, as described above, for registration purposes.

Documents may now be submitted through the website following the incorporation of the company; the website will also provide information on the online incorporation procedure.

- d. Decree-Law 24/2019 (Electronic communication between the national commercial register and other EU Member States' registers)

Lastly, DL 109-D/2021 amends the regime applicable to electronic communications between the national commercial register and other EU Member States' registers, broadening the range of information provided free of charge by the national commercial register to the system of interconnection of registers. This information will now include - in addition to the information on the name, legal nature, registered office, country of incorporation and taxpayer identification number - the company's European Unique Identifier (EUID), status, purpose, and legal representatives.

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