THE REMUNERATION OF THE EXECUTIVE DIRECTORS: THE SUPREME COURT DISPELS THE COMPANIES REGISTRARS MISCONCEPTION

On February 26th, 2018, the Supreme Court (hereinafter, also as **"SC"**), in its sentence no. 98, gave an abrupt change of direction to the interpretation that Regional Courts and the General Directorate of Registers and Notaries have been maintaining regarding the provisions which regulates unlisted companies' CEOs and executive directors remuneration after 2014 reform of the Capital Companies Act (introduced by law 31/2014, of December 3). For the first time, the SC takes a stand on the doctrinal debate kept since the aforementioned reform and, contrary to the prevailing interpretation maintained until the present, advocates for the submission to the shareholders meeting of the remuneration of all the directors, including executive ones, and all that for the sake of corporate governance and transparency.

If the 2014 reform purpose was to clarify and provide certainty to the recurring and extremely sensitive issue of the directors' remuneration system, its results could not have been more erratic since, currently -after more than 3 years since its entry into force-, we fall flat on our faces with a SC ruling, which contradicts the stance assumed by companies following the interpretation blessed by the General Directorate of Registers and Notaries.

Therefore, it will be necessary to re-examine (i) the articles of association of companies whose governing body is a board of directors and (ii) the resolutions of the shareholders meeting concerning the director remuneration system in order to verify they are within the scope of the recent sentence -for the moment, isolated- of the first chamber of the SC. Moreover, it must be reminded that, since 2014, any CEO or executive director whose position is remunerated has to be in possession of a contract with the company.