

## The Central Mercantile Register in Spain. Its organization and functions.

The mercantile register system in Spain is comprised of Territorial Mercantile Registers and by the Central Mercantile Register, dependent upon the Ministry of Justice.

In accordance with mercantile legislation currently in force<sup>1</sup>, the Central Mercantile Register is entrusted with the following tasks:

**One:** The centralization, organization, processing and *referential information* of data relative to corporate acts on file in the Territorial Mercantile Registers and which are sent to it by them.

**Two:** The reservation and publication of *company and legal entity names*.

The Name Section of the Central Mercantile Register may likewise include *Designations of origin*.

**Three:** *The publication of the Official Gazette of the Mercantile Register.*

With regard to the first of the indicated functions, it should be emphasized that the First Directive of March 9, 1968 was the key to the restructuring of our *mercantile register publication* system. The aforementioned Directive established the need to attain suitable protection for the interests of members and third parties, for which purpose it deemed the following as essential:

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<sup>1</sup> First directive of March 9, 1968, Sections 16 through 24 of the Code of Commerce; Act 25/89 dated July 25 on the Reform and adaptation of Spanish mercantile legislation to Directives of the European Economic Community on corporate matters; Mercantile Register Regulation approved by Royal Decree 1597/1989 dated December 29 and modified by Royal Decree 1784/1996 dated July 19, and Ministerial Order dated December 30, 1991

**a)** to coordinate national provisions on publication; **b)** to implement the necessary mechanisms for making third parties aware of the *company's essential acts* and certain indications referring thereto, as well as the identity of those persons with the power to bind them, and **c)** to limit the causes of invalidity for commitments contracted on behalf of the company.

The *First Directive* was responsible for determining those acts and indications that, at minimum, required obligatory publication. These include those relative to the structure of the company (deed of incorporation, bylaws and their modifications); persons to whom its representation, management, surveillance or settlement is entrusted; some data of a financial nature, such as the amount of subscribed capital or the balance sheet and income statement for each year, and others with a decisive impact on the life or performance of its activity, such as the change of registered office, the dissolution of the company or the legal declaration of its nullity.

The *First Directive* likewise addressed the procedure for carrying out such publication, consisting of the opening of an individualized dossier or record in a Mercantile Register or Central Register, in order to be able to obtain information on each company, in its entirety or an extract thereof.

The register publication system was completed by the provision set forth by the aforementioned Directive on the required publication of acts and indications deemed as essential in the National Gazette designated by each Member State for this purpose.

Therefore section 6 of the First Directive indicates that: “*acts and indications will not be opposable by the company vis-à-vis third parties until after their publication in the aforementioned gazette, unless the company proves that these third parties were already aware of them. Nevertheless for those transactions undertaken prior to the sixteenth day following the date of publication, the acts and indications will not be opposable to third parties that prove it was impossible for them to have had a knowledge of these*”.

In our system, once the entries are made concerning corporate acts recordable in the territorial Mercantile Register corresponding to the domicile, the essential data are notified within a maximum of three business days to the Central Mercantile Register, which is responsible, by telematics applications, for their transfer to the Autonomous Institution “Official Gazette of the Spanish State”, dependent upon the Presidency of the Government, in order to publish them in the publication known as the Official Gazette of the Mercantile Register (BORME).

The Spanish legal system established following the reform of 1989 combines a mechanism characteristic of the official publication of private legal status, based on Provincial Mercantile Registers (territorial) which are recognized with the effects characteristic of *legitimation and authority to attest* with another, which is the publication in an Official Gazette.

The innovation of the reform of 1989 consisted of attributing full effects vis-à-vis third parties arising from registration to the publication of certain essential corporate data in the BORME, and a period of time, - 15 days - , beginning as of the day after the date of the aforementioned publication.

The Central Mercantile Register, while making the publication of the BORME possible, contributes from its informative function to achieving a greater knowledge of the data recorded in the territorial Mercantile Registers, in order to attain maximum protection for third parties.

Nowadays there is nothing to prevent the maximum period of 3 days for sending data from provincial (territorial) Registers to the Central Register from being decreased to the maximum, since telematics between both Institutions make it possible to send these immediately.

It is true that, along with speed, a perfect coordination between the aforementioned Institutions is essential, so as to ensure complete symmetry between the data recorded and published in order to render suitable compliance with the *principle of veracity*.

An analysis of recent proposals for the reform of the First Directive of 1968, elaborated by the group known as SLIM and submitted to European Parliament and the Council, as well as the recommendations reached as a result of the Winter report, allow for the establishment of the following conclusions:

**First:** The mercantile register organization in our country, based on a mixed system comprised of Territorial Mercantile Registers and one Central Register, is ideal not just for fulfilling the functions envisaged in the Directive of 1968, but for attaining the fulfillment of the new objectives proposed by the Commission as well, in the sense of achieving easy and rapid access to certain corporate acts, even cross-border.

In this manner the effects based on the registration of documents in territorial registries are combined with those tied to information deriving therefrom and linked in summarized form to the Central Mercantile Register, which facilitates corporate localization and reference information on essential data of registered companies.

This system in turn contains the key to the legal and technical configuration that allows the Central Mercantile Register to perform the *provisional and final reservation of corporate names*, in perfect coordination with the Territorial Registers, as we shall later see.

**Second:** Since the proposal for the reform of the First Directive maintains the current system of full opposability vis-à-vis third parties in good faith based on the publication in the national gazette, whether on paper, electronic or equally effective format and within another 15 days, the member States will adopt the measures necessary to avoid any discord between the content of the registration and the publication.

The *second* of the functions of the Central Mercantile Register indicated above refers to the *reservation and publication of company and legal entity names*.

The corporate title or name is, for bodies corporate, the distinguishing and individualizing sign that fulfills a function that is similar

to the name of individuals. In legal traffic, the *corporate name* serves to identify the body corporate as the subject of rights and obligations.

While it differs from the *trade name*, that identifies an individual or body corporate in the *exercise of the business activity*, and the *trademark*, in terms of signs or means that distinguish given products or services on the market, the *corporate name* has special relevance from a financial point-of-view since it frequently appears associated with industrial property rights.

To this regard, the current Spanish Trademark Act 17/2001 of December 17 in its additional *provision fourteen* establishes that: “*The registration authorities with competence for the granting or verification of names for bodies corporate, will deny the name or corporate name requested if it coincides or could lead to confusion with a trademark or trade name that is notorious or renowned in the terms that stem from this Act, unless there is authorization from the holder of the trademark or brand name*”.

Spanish legislation that attributes the reservation and publication of the corporate names of bodies corporate to the Central Mercantile Register combines agility and efficiency, by means of the use of modern data processing and communication techniques and the establishment of a maximum period of 3 days for granting these, where appropriate, with a rigorous prior examination by the Central Mercantile Register, in order to determine the appropriateness of the requests formulated to the principles inspired by our system on the issue of trade names.

Together with the freedom to choose a subjective, objective or mixed name, there is a general prohibition from including “*terms or expressions that are contrary to the Law, public order or good practices.*”

Two basic principles govern this material when conducting the examination of requests for a trade name: The principle of *unity* (section 398 RRM) by virtue of which “*Companies and other recordable institutions may have only one name*”, and that of *specialty* (section 407 RRM) by which “*companies or institutions are prohibited from having the same or a very similar name as another, all of which is in accordance with*

*pre-established legal criteria. Likewise, the “inclusion in the name of terms or expressions that lead to error or confusion in commercial trade on the identity of the company or institution itself and on the type or nature of these” (section 406 RRM).*

The protection of the *individual name* is established in section 401 RRM, and requires the authorization of its holder when this is not the beneficiary itself of the name.

In the same manner, in cases of notoriety or renown, the authorization from the holder of the corresponding industrial property rights on the trade name or trademark should be accredited (formerly section 407 RRM and currently the aforementioned additional provision fourteen of the Trademark Act).

The utilization of corporate names, of terms or expressions that coincide or could be associated with official bodies or institutions as well as those that, for reasons of general interest, are worthy of special protection, is prohibited (section 405 RRM).

When the result of the examination by the Central Mercantile Registrar is unfavorable, the interested party may file a governmental appeal, either before the Registrar himself, requesting the revision thereof, or before the General Directorate of Registers and Notary Offices (Ministry of Justice). The Resolution from this institution will leave the process open before ordinary Civil Jurisdiction.

Section 413 RRM establishes that *“the deed of incorporation of companies and other recordable institutions or the deed for the modification of their names may not be executed unless the notary is provided with the certification establishing that the chosen name is not registered, for incorporation into his protocol”*.

The certification is the means of establishing the provisional reservation of the corporate name in the Name Section of the Central Mercantile Register.

Such reservation of the name granted has a maximum period of 15 months and becomes *definitive* by means of the communication from the corresponding Territorial Mercantile Register to the Central Mercantile register, if the registration of the recordable company or institution or its change in name takes place therein (section 415 RRM).

As of its creation in 1990, the *Name Section* of the Central Mercantile Register is an efficient legal instrument for protection of the corporate names of bodies corporate registered in Mercantile Registers, protection that could also extend to all bodies corporate, regardless of their civil or mercantile nature.

Likewise as a publication Institution, albeit in summarized form, it has proven to be agile, efficient and open to collaboration with a broad spectrum of state-owned and private Institutions and Entities.

Especially relevant to this regard is the support that it has rendered, in accordance with general provision nine of the Order dated March 18, 2003, to the government authority Red.es as the Spanish authority for the assignment of domain names under .es.

The Register Institution in Spain, in that it has modern and efficient information systems, thus contributes to providing legal traffic with greater security and, by means of new cross-border communication networks, enables the flow of information on companies within the European scope.

In Madrid, on May 7, 2003

Signed Mr. José Luis Benavides del Rey  
Central Mercantile Registrar