

# THE BASIC PRINCIPLES OF THE SPANISH MERCANTILE REGISTER

Pablo CASADO BURBANO  
Registrar of Deeds and Mercantile  
Registrar.  
Spain

## **1.- Principles relating to eligibility for registration.**

### **1. 1. Classification.-**

The Mercantile Register is only open to the facts, deeds or transactions determined by law (see Arts 16 and 17 of the Commercial Code and Art. 2 of the Mercantile Register Regulations).

### **1. 2. Obligability.-**

Registration is mandatory except for self-employed businessmen who are not shipowners, and mutual funds (see Arts 19 of the Commercial Code, 4 of the Mercantile Register Regulations and 41 of Act 44/2002).

### **1. 3. Public record.-**

Generally speaking, entries are made by virtue of a document on public record; one notorious exception would be documentation signed by persons vested with certifying powers in business corporations, particularly with respect to the appointment and separation of corporate officers (see Arts 18 of the Commercial Code and 5 and 142, 151, 153 and 245 of the Mercantile Register Regulations).

### **1. 4. Petition.-**

Register entries are made at the request of the party concerned and not *ex officio* by the Registrar (see Art. 45 of the Mercantile Register Regulations).

### **1. 5. Priority.**

The Register is closed to any registrable document that contradicts or is incompatible with documents registered previously, even if such document bears an earlier date and the Registrar, when making the respective entries, must abide by the strict chronological order of submission (see Art. 10 of the Mercantile Register Regulations).

### **1. Chain of record.-**

There must be a record of prior entry of the respective subjects or certain acts or relevant appointment of officers to be able to proceed to enter acts

relating to the former or performed by the latter (see Art. 11 of the Mercantile Register Regulations).

### **1. 7, Qualification.**

The Mercantile Registrar must, under his own responsibility, verify the legality of the extrinsic forms of the documents whose entry is requested and, as appropriate, the legal capacity and legitimation of the persons delivering them, the validity of the content of such documents and any supplements, as well as what ensues therefrom and from the entries in the Register itself (see Arts 18 of the Commercial Code and 6, 58 and 368 f the Mercantile Register Regulations).

## **1. Principles relating to the effectiveness of entries.**

### **2. 1. Legitimation.-**

The content of the Mercantile Register is presumed to be accurate and valid and its entries are safeguarded by the Courts and are legally effective until such time as a judicial decision renders them inaccurate or null and void (see Art. 20.1 of the Commercial Code and 7.1 of the Mercantile Register Regulations).

### **1. 2. Declaratory value.-**

Barring rare exceptions, registrable acts and contracts are performed and executed outside the Mercantile Registry, its asseverations having declaratory value, while (non-)registration does not corroborate the nullity of such acts or contracts (see Arts 20.2 of the Commercial Code and 7.2 of the Mercantile Register Regulations).

### **2. 3. Authority to attest documents.**

A declaration of inaccuracy or nullity shall not adversely affect the rights acquired by third parties in good faith, rights being understood to have been acquired according to law when acquired by virtue of an act or contract that is valid pursuant to the contents of the Register (see Arts 20.2 of the Commercial Code and Art. 8 of the Mercantile Register Regulations).

### **2. 4. Effects.-**

Acts that are subject to registration will only have effects vis-à-vis third parties acting in good faith from the date of their publication in the “Official Journal of the Mercantile Register”, the effects of the entry being upheld, although in the event of transactions effected within the fifteen days following publication, the acts entered and published shall have no effects vis-à-vis third parties who prove they could not have been aware thereof (see Arts 21 of the Commercial Code and 9 of the Mercantile Register Regulations).

## **3. Principle relating to communication of Register content.**

**Forms of accessibility.**

The content of the Mercantile Register is public and open to anyone interested. Such accessibility is implemented by means of certifications, simple information notes of entries or copies of the documents recorded, or via telematic media (see Arts 23 of the Commercial Code and 12 of the Mercantile Register Regulations).

**THE BASIC PRINCIPLES**  
**OF THE SPANISH MERCANTILE REGISTER**

CLASSIFICATION	OBLIGABILITY	PUBLIC RECORD	PETITION	PRIORITY	CHAIN OF RECORD
	CONTROL OF LEGALITY QUALIFICATION			FORMS OF ACCESSIBILITY	
LEGITIMATION	AUTHORITY TO ATTEST	DECLARATORY VALUE	EFFECTS (THIRD PARTY)		