Grant Thornton

LEGAL NEWS

# Legal Highlights

**May 2025**

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# The Supreme Court confirms the liability of banking institutions in cases of phishing

The Supreme Court has recently issued a ruling dated April 9, 2025, of great importance for the protection of digital banking service users. In this decision, the Court reinforces the liability of financial institutions in cases of identity theft and unauthorized transactions. The ruling emphasizes that banks cannot merely comply formally with technical authentication protocols; instead, they must take a proactive and diligent approach in both preventing and managing such incidents.

The judgment particularly stresses that the mere existence of two-factor authentication systems, such as sending codes via SMS, does not exempt institutions from their duty to protect customers. The Supreme Court holds that banks must effectively monitor the security of their digital channels and act swiftly in response to any alerts or communications from users regarding potential fraud. Thus, if unauthorized transactions occur and the customer has acted with due diligence, the bank will be held liable for the financial losses unless it can prove that the customer acted fraudulently or with gross negligence. This ruling interprets the provisions of Royal Decree-Law 19/2018, of November 23, on Payment Services.

This decision represents a significant step forward in consumer protection against the growing threat of electronic fraud. The Court strengthens the position of users, who will now be better supported when claiming reimbursement of funds stolen through unauthorized operations, provided they have fulfilled their basic responsibilities in safeguarding their credentials and devices. Furthermore, the ruling obliges financial institutions to review and enhance their security systems and their protocols for responding to fraud incidents.

In summary, this Supreme Court doctrine marks a turning point in the relationship between banks and clients in the digital realm. For users, it means stronger protection and the ability to hold their bank accountable in the event of fraud. For banks, it entails a greater obligation to ensure vigilance and diligence in managing digital security. Undoubtedly, this ruling will help raise the standards of protection and trust in online banking services in our country.

Our litigation team has extensive experience in recovering funds from financial institutions in cases of this type of fraud.

# Main aspects of Royal Decree-Law 4/2025, of April 8, on urgent measures to mitigate the impact of the United States tariff policy on the Spanish economy and to relaunch commercial activity. Hereinafter referred to as the "RDL".

The United States has increased tariffs, affecting specific sectors of the Spanish economy. Through the RDL, the aim is to protect companies and workers, facilitate liquidity, encourage investment, and diversify markets. To these ends, a Response and Commercial Relaunch Plan will be mobilized, with the objective of providing overall financing to the business environment amounting to 14.1 billion euros.

Below, we analyze the main aspects included in the mentioned RDL:

**1. Financial instruments contemplated:**

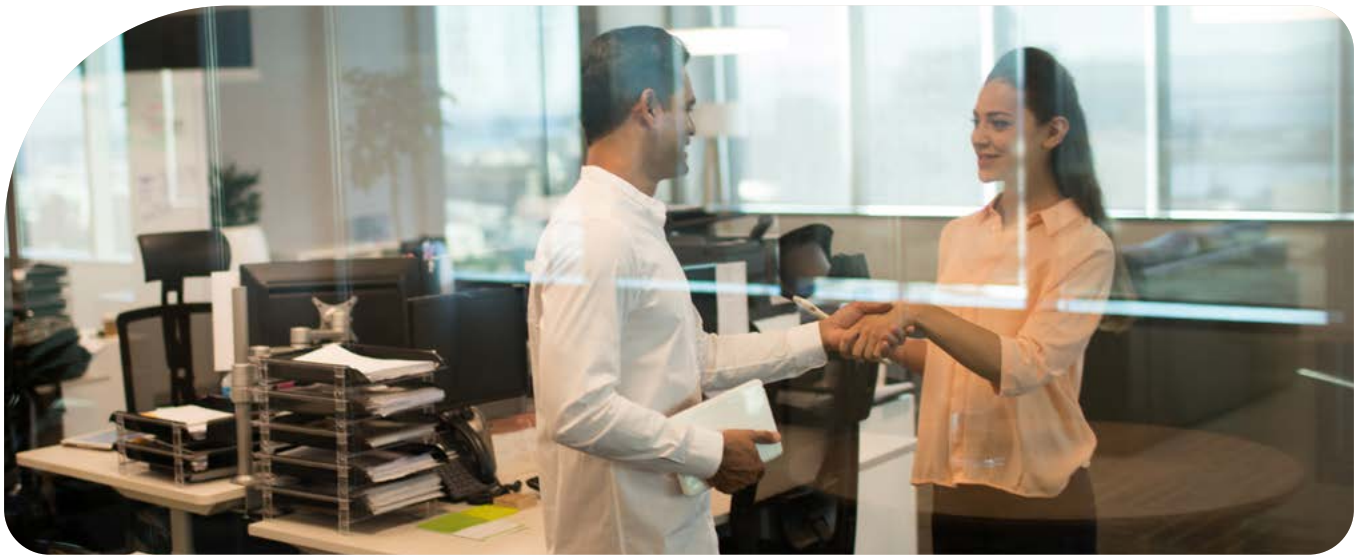
- Creation of a guarantee line of 5 billion euros for affected companies.
- Increase of the Business Internationalization Fund (FIEM) from 500 to 700 million euros.
- Strengthening of internationalization risk coverage managed by CESCE, raising the coverage limit to 15 billion euros.

**2. Suspension of the cause for dissolution provided in article 363.1(e) of the Capital Companies Act:** Losses in 2020 and 2021 that reduce net equity to an amount less than half of the share capital will not be considered for the purpose of company dissolution until the end of fiscal year 2025.

**3. Extraordinary deadline for the formulation of annual accounts:** Possibility to reformulate accounts until May 9, 2025.

4. T**erritorial balance:** Funds will be distributed proportionally according to the exposure of each autonomous community to trade with the United States.

**5. Accountability:** The Minister of Economy, Trade, and Enterprise will report quarterly to the Congress of Deputies on the progress of the Response and Commercial Relaunch Plan.



# Urban lease preemption right

The Full Civil Chamber of the Supreme Court addressed in its ruling dated April 21, 2025, the issues concerning the right of first refusal and urban lease preemption right, upholding the appeal against the resolution that recognized the preemption right of the plaintiffs as tenants of the dwellings. To dismiss the claim initially recognized in favor of the tenants, the judgment explains that the 1994 Urban Lease Act (LAU) introduced a substantial change in the configuration of preferential acquisition rights, significantly reducing the cases in which they apply. This is so because Article 25.7 of the LAU contains a provision explicitly more restrictive of tenants' preferential acquisition rights than its predecessor, Article 47 of the 1964 LAU. For its application, it must be established that the cases of "joint sale" provided therein concur, meaning either: (i) the object of the sale includes all the properties or real estate units owned by the transferor in the building; or (ii) all the flats and premises of the building are sold jointly, even if they belong to different owners, considering these as the only cases where the exclusion of preferential acquisition rights (right of first refusal and preemption) would apply.


In this case, the sale subject to litigation included all the units that the Municipal Housing Company owned in each building at the time of the transfer, although they did not correspond to all the units that made up the buildings. Regarding the case analyzed, the transfer comprised all the dwellings owned by the seller in the specific building concerned.

It is also concluded that the applicability of Article 27.5 LAU was not prevented by the fact that this sale was made together with other units/dwellings belonging to other buildings, since one of the factual assumptions for applying this article is that the object of the sale includes all the properties or real estate units owned by the landlord in the building where the leased flats or premises are located.

Therefore, the fact that the sale is part of a broader operation is irrelevant for these purposes, as the law does not prohibit it. The tenant's inability to exercise the right of preemption is justified by the fact that the sale is made over an object different from that on which the lease applies, as it concerns one of the larger units contemplated by law, whether the entire building or all the elements owned by the landlord in that building. The law only allows the preemptor to reacquire the object proper to the lease subject to sale when it is an independent unit.

# Confidential Binding Offer (CBO) as an Appropriate Dispute Resolution Method (ADR), introduced by Organic Law 1/2025

As a consequence of the entry into force of Organic Law 1/2025, on January 3rd, prior to filing a legal claim in certain proceedings, it is mandatory to engage in a preliminary negotiation through one of the alternative methods established in the law (known as ADR – Appropriate Dispute Resolution methods). One of the options provided is the Confidential Binding Offer (CBO).

Although each case must be assessed individually, the CBO appears, in principle, to be one of the most practical and agile ADR mechanisms. This is not just an informal document or a standard demand letter as commonly used in the past.

Regarding the CBO, aside from being confidential, it is important to note the following:

i. In terms of minimum content, it must clearly identify the parties involved, describe the legal dispute, include the proposal being made, and specify a deadline for acceptance—which must be at least one month.

ii. It is mandatory that if the dispute or proposed agreement involves an amount greater than €2,000, both the issuance and acceptance of the offer require legal counsel. A lawyer must provide legal advice and co-sign the agreement with the party.

Finally, the offer must be explicitly accepted. Once accepted, both parties are legally bound to comply with the agreement. However, if the recipient takes no action within the specified period, it will be understood that they reject the offer, and a legal claim may then be filed—provided it can be proven that the offer was duly sent and received, as evidence that an attempt at out-of-court resolution was made.