Last March 3 Law 1/2010 of March 1 on the reform of Law 7/1996 of January 15 on the Order of Retail Business entered into effect, the aim of which is to adapt its content to the demands for the elimination of steps and the simplification of administrative procedures in the granting of authorization pertinent to the subject of commerce, partially transposing Directive 2006/123/EC of the European Parliament and Council of December 12, 2006 relative to the services in the interior market that imposes on Member States the obligation to eliminate all the legal obstacles and unjustified administrative barriers to the freedom of establishment and the provision of services that are contemplated in Articles 43 and 49 of the Treaty, constituting the European Community.

In summary, the most significant modifications that the Law introduces, are as follows:

I. In general, the installation of commercial establishments shall not be subject to an authorization regime:

   a) Except when this is justified due to overwhelming reasons of general interest related to commercial distribution such as i) the protection of the environment and urban environment ii) the order of the territory ii) the conservation of artistic historical patrimony and iv) the protection of consumers understood in conformity with that set forth in the Reformed Text of the General law for the Defense of Consumers and Users. In no case shall requisites of an economic nature be able to be established and override the economic criteria of the granting of the authorization.

   b) The Autonomous Regions must identify in their rules the reasons that cause the establishment of these regimes and their estimated impact. The requisites that are established for granting these authorizations have to be dealt with together with the criteria based on overwhelming reasons of general interest related to commercial distribution such as i) the protection of the environment and urban environment ii) the order of the territory ii) the conservation of artistic historical patrimony and iv) the protection of consumers understood in conformity with that set forth in the Reformed Text of the General law for the Defense of Consumers and Users. In no case shall requisites of an economic nature be able to be established and override the economic criteria of the granting of the authorization.

   c) The rules of the Autonomous Regions have to coordinate all the administrative steps for the installation of commercial establishments.

   d) In any case, authorizations shall be granted for an
indefinite time and shall refer solely to the conditions of the physical establishment, thereby avoiding that new authorizations due to change of ownership or transfer of companies are required once the impact of the establishment is proven and the grant shall be performed by positive silence upon lack of an express administration resolution as a measure of administrative simplification aimed at facilitating access to the activity. It prohibits the intervention of competitors in the authorization procedures that if the case are established for the installation of commercial establishments.

e) Prior authorization for exercising the automatic sale activities that the competent authorities grant in the areas of commerce is eliminated and is transferred to the technical rules that are applicable.

f) Insofar as ambulatory or non-sedentary sales, specifications that are introduced in light of Directive 2006/123 of the European Parliament and Counsel of December 12, 2006 relative to services in the interior market, must have municipal authorizations.

g) It simplifies and updates the regulation of the inscriptions in the Registry of Long-Distance Sales and the Registry of Franchisers that exist for informative purposes at the Ministry of Industry, Tourism and Commerce as measures of administrative policy corresponding to market discipline and aimed at consumer protection. The inscription in said registries are substituted by an obligation of communication “a posteriori” to the activity that is performed.

h) Likewise, the Special Registry of Entities and Distribution Centers for Perishable Alimentary Products created by the Decree-law 13/1975 of November 17 on Economic legal order is eliminated. This measures follows a mandate for administrative simplification contained in Directive 2006/123/EC of December 12, since the material regulated, perishable food, is subject to strict community legal order in the area of alimentary products; a subject over which both the Ministry of the Environment and Rural and Marine Environments as well as the Autonomous Regions have jurisdiction and which in some cases have developed regulation of the mentioned registry.

II. It modifies the regulation contained in Law 7/1996 of January 15 in the area of infractions and sanctions, adapting the amount of the fines to the current economic reality and the economic capacity or solvency of the company that together with those contemplated in the Law aid the adjustment of the sanctions that take into account the characteristics of the violating company for purposes of the repercussions of the infraction committed in the commercial distribution section in a manner that the fines effectively produce the deterring and repressive effect that they pursue.

III. Lastly, five new additional provisions are added:

They establish that the competent Public Authorities that violate said law shall be fined and shall assume, in the part that is attributable to them, the liabilities that would have arisen from such breach.

   a) It highlights the obligation of carrying out the evaluation of the environmental impact prior to the responsible statement or communication when this is the manner of controlling the activity.

   b) Accessibility and non-discrimination conditions are established in access and use of commercial establishments.

   c) Urban planning of commercial uses are included.

   d) Regulating the legal regime of commercial distribution
contracts are proposed.

Royal Decree 245/2010 of March 5 by which Royal Decree 2245/1986 of October 10 has been modified by which the Regulation for the execution of Law 11/1986 of March 20 on Patents has been approved.

The Royal Decree 245/2010 of March 5 was published in the Official Gazette on March 23, 2010 entering into effect the next day.

Said Royal Decree modifies title III and IV and section a) of the second final provision and adds an annex. It eliminates Articles 71 to 75, with Articles 76 to 82 of Royal Decree 2245/1986 renumbered and approves the Regulation for the execution of Law 11/1986 of March 20, 1986 on Patents.

The aim of said modification is to accommodate the new Law 17/2009 of November 23 on the Free Access to Service Activities and their Exercise that has transcribed the Directive 2006/123/EC of the European Parliament and Council of December 12 2006 relative to the services in the interior market in the Spanish Legal Order.

Said rule seeks to reduce the administrative and documentary burden and harmonize the requisites of registration of registry modifications for all types of industrial property. Within their modifications, we highlight.

- a) The modifications of rights on patents and useful application forms registered with the Spanish Office of Patents and Brands shall be made following the same guidelines currently established for trademarks and industrial designs in their effective law.

- b) Documentary requisites are reconciled for the registration of transfers, licenses, real rights, name changes and other modifications of rights for all types of industrial property.

- c) In Article 79 of the referred to Law of Patents, the requirement of a public document for the execution of transfers and licenses is eliminated.

- d) The rule relative to access and exercise of service activities such as is the case of those developed by agents of industrial property is simplified.

- e) The regime for the acquisition of the status and exercise of the activity of Industrial Property Agent is updated and shall be performed in accordance with the principles incorporated in the aforementioned Law 17/2009 of November 23. In short, the most important modification that is introduced in the Regulation on the Execution of Patent law is the substitution of the prior authorization regime for the least burdensome system of beginning the activity after the presentation of a responsible statement.

Royal Decree 201/2010 of February 26 that regulates the exercise of the commercial activity under the regime of franchises and the communication of data to the registry of franchisors.

As of March 14, 2010, Royal Decree 201/2010 of February 26 entered into effect that regulates the exercise of commercial activity under a franchise regime and the communication of data to the registry of franchisors and the aim of which is to develop the regulation of the commercial activity under a franchise regime, thereby establishing the basic conditions for developing the activity of transferring franchises and the regulation of the operation and organization of the registry of franchisors.

Article 62 of Law 7/1996 of January 15 on the Order of the Retail Seller, governs the regime of franchises. Section 2 of this article provides that the physical or legal person that seeks to develop the franchise activity in Spain must communicate their data within a period 3 months from the beginning of their activity and solely for informative reasons, to the Registry that the competent authorities may establish and must be coordinated with the state Registry. On the other side, section 3 of this article determines the
information that the franchiser shall deliver to the future franchisee in order for them to be able to freely decide and with knowledge of cause its incorporation to the network of franchising. Likewise, this section indicates that other basic conditions for the activity of transferring franchises shall be established.

The most significant aspects may be summed up in the following points:

The regulation of the state Registry created in 1998, which guarantees the centralization of data relative to franchisors has been improved for purposes of information and publicity and for this purpose the technical and coordination directives are established among similar registries that the autonomous regions may establish under the principle of interoperability of registries and a single information window provided in the Services Directive

a) In any case, the operation of the Registry shall correspond to the autonomous regions where the franchisors have their headquarters in such a manner that proposals for registration, cancellation and renovation that those produce shall be accepted as binding.

b) The need of the Registry of franchisors has been promulgated among other reasons, for the convenience of having an updated census of these companies, the commercial sector of which is experiencing a strong development in Spain.

c) The final sole provision of Law 7/1996 of January 15 of the Order of Retail Commerce indicates that Article 62 constitutes civil and mercantile legislation and shall be of a general application under the exclusive jurisdiction of the State in order to regulate the content of private contract law, resulting in Article 149.1.6 and 8th of the Constitution.

d) Likewise, section 2 of Article 62 is deemed a basic rule, promulgated under Article 149.1.13th of the Constitution.

**Ruling 792/2009 of December 16, 2009**

On December 16, 2009, the Supreme Court (Civil Chamber) issued Ruling 792/20090 in cassation in a procedure begun in March 2003 by the Organization of Consumers and Users (OCU) against various financial entities. The object of the procedure focused on consumer protection and users from the perspective of the type of clause foreseen in different contracts executed between Banks and Savings Banks and the users of their services relative to i) loans, ii)savings, iii) deposits in current accounts iv) credits v) credit and debit cards, raising the ruling of nullity due to the abusive character based on Laws 7/1998 of April 13 on General Contract Conditions –LGCC- and 26/1984 of July 19, General for the Defense of Consumers and Users LGDUC and requesting the i) the ruling on the abusive character and the ruling on the absolute nullity of seventeen bank clauses ii) the prohibition that the defendants be able to return to using said clauses in the future iii) an order of publication of the ruling in at least two national newspapers and iv) the registration of the ruling in the Registry of General Contracting Conditions.

In light of these developments, Ruling 792/2009 has ruled that:

I. Valid Clauses

**Effectiveness in judgment of the Agreement on the issuance of debt certification** for the judicial claim of unpaid loans and cards (liquidation agreement)

**Clause on the compensation of balances including the case of various holders** that allows compensating a debt of any holder of an account although the pending debt is only of one of the holders.

**Agreement on waiver of liability of the Entity in payments with cards,**
due to incidents between the holder of the card and the shop

Agreement on the early termination of the loan due to non-payment of a single payment (clause on early expiration).

Agreement for which the mortgage guarantee is extended to legal costs.

II. Null and void clauses

Lack of information to the client on the rates and commissions since it prevents the consumer from finding out about the commissions that they are going to be charged.

Clause on submission to a forum, with this being that which binds consumers to turn to courts different from those that correspond to them in function of their domicile and other forums that the law recognizes.

Imposition on the client of costs and expenses of an eventual process on the basis of which the user is bound to pay all the expenses that a judicial process involves, that is to say, both the invoices of their lawyer and the procurator as well as those of the bank, regardless of what is the result.

Total liberation of liability in the payment of manipulated or forged checks With this clause, the liability is transferred to the consumer in the case that someone forges a check and cashes it.

Total Liberation of liability for operations with lost or stolen cards, prior to the communication of the loss or theft that permits the bank to be exempt from any liability for the economic damages incurred during the temporary lapse between the loss or theft of the card or passport and the notice on the part of the affected party.

Exemption of liability in failures at automatic tellers and devices for card operations which permits the bank or savings and loan to avoid liability for the improper operations of an automatic teller machine even though the receipt indicates that the operation has been performed.

Agreement on the early termination of the loan due to breach of generic loans. Clause that reserves the possibility of termination of a mortgage loan agreement for any reason.

Agreement on early termination of the loan due to impossibility of registering the loan in the Registry. The nullity is declared because the agreement does not distinguish if the lack of inscription is the liability of the debtor or the Entity, thereby being abusive when the liability is that of the latter.

Agreement on early termination of a loan due to insolvency or foreclosure that permits the ban or Savings Bank to terminate a loan early in light of the possible decrease in the assets of the borrower. The Supreme Court considers that there exists contractual imbalance and deems it abusive that the Entity reserves this power without alternatives for the borrower.

Termination of liability due to computer failures. (computer banking) by which the entity is freed of the liability for damages caused for failures during the transmission of an operation due to computing means.

Agreement on Prohibition of leasing a mortgaged property. It shall be deemed abusive the generic and total prohibition, permitting the limitation on renting when the income and other obligations do not fulfill minimum parameters with the intention of avoiding the detriment to the value of the guarantee.
Agreement on prohibition on selling the mortgaged property Clause in which pledging a mortgaged property is prohibited. The clauses are deemed abusive because their application is not limited to renting of dwelling excluded from the principle of purging in a forced execution (Article 13 of the Law of Urban Rentals) being otherwise due according to the Supreme Court rules in its ruling that, if the case, the clauses that are drafted establishes a scale or coefficient that corrects the decrease in value that the renting encumbrance may cause.

Agreement by which the mortgagor waives the right to be informed of the possible transfer of their credit in which the bank or savings bank is freed from communicating the transfer of the loan to third parties by which the Supreme Court considers that the recognized rights prevail above the power of a recognized waiver in the Mortgage Regulation

Procedural Law


I. The monitoring process

The monitoring process was created in order to create rapid and efficient protection of the creditors of those liquid monetary loans to their debtors that have not paid for any reasons, loans and amounts duly justified in certain documents that the law sets forth.

The monitoring process is adequate in order to resolve claims founded on a demand for payment of a monetary, overdue and due debt of a certain amount that is documentally justified.

Law 13/2009 of November 3, on the reform of procedural legislation for the implementation of the new Judicial office will make a series of modifications to the Law on Civil Judgments 1/2000 of January 7, that shall enter into effect on Mary 4, 2010. The most significant aspects are the following.

a) Limit on the amount of the claim. It increases from 30,000 to 250,000 Euros.

b) Checking the documentation of the debt- The Judicial Secretary must check if the documents submitted with the monitoring request are those indicated in Article 812 or they constitute a principal of the proof of law of the petitioner. If it is deemed that they do not fulfill such requisites it will permit the judge to terminate that which corresponds to the admission to handle the request.

c) Order to the debtor. If the request is admitted to be handled, the Secretary requires the debtor to pay within 20 days and accredit it or appear and oppose.

d) Execution for neither paying nor appearing. The Secretary shall issue a decree in which the monitoring process is deemed terminated and will be transferred to the creditor in order for them to request execution. It is not dealt with automatically rather it requires that it is requested (mere request a claim is not necessary)

e) Consequences of opposition. If the amount does not exceed 6,000 Euros or when rents are claimed for or amounts due by a tenant of an urban dwelling (regardless of the amount) the Secretary issues a decree declaring the monitoring process terminated and summoning the parties to appear at an oral trial.

II. Eviction Action

Law 19/2009 of November 23 on measures for promotion and procedural facilitation of renting and energy efficiency of buildings has introduced a series of modifications in the Law on Civil Judgments 1/2000 with respect to the action of eviction, the most important of which we highlight below.
a) The necessary prior notice for a order to prevent the enervation is reduced to one month. The tenant has the right to enervate the eviction action only once provided that the landlord has not requested payment previously. Until now, this order had to be made by the tenant at least two months prior to the presentation of the claim in order for the enervation to be prevented. After the reform, it suffices that the demand be made one month prior in a manner that once the tenant is requested to pay, the claim may be filed at the end of the month if the amounts have not been paid.

b) In order to facilitate the process in which eviction is not sought and only the payment of rents is requested, this type of claims shall be sustained henceforth by verbal legal steps regardless of the amount and not be ordinary procedure.

c) With the reform, the Law permits that in the eviction claim itself the execution of the Ruling is left to the interested party.

III. Amount of the verbal and ordinary trials.

Law 19/2009 of November 23 on measures for promotion and procedural facilitation of renting and energy efficiency of buildings has resulted in modifications to Articles 250 and 249 of the Law on Civil Judgments, thereby changing the amount of the verbal and ordinary procedures.

a) Those matters that do not exceed 6,000 Euros shall be decided by verbal trial, thereby modifying Article 250 of the LEC given that previously the limit was established in 3,000 Euros.

b) Therefore, those procedures that exceed 6,000 Euros shall be decided by ordinary trial, thereby Article 249 of LEC having been modified.

IV. Quick Trials Offices of Immediate Indication.

With the reform of the Judicial Office, offices of immediate indication shall begin to be installed with a jurisdiction apart form that served by the Judges. With this method, that which is sought is basically the creation of offices which are accessory to the court in order that they act as a filter and in this manner manage to unblock the administration of justice.

This type of offices will only handle certain matters, among which:

- Claims of an amount referred to in section 2 of Article 250 of the LEC.
- Evictions from urban dwellings due to the legal contractual expiration of the term or due to lack of rents or amounts owed and if the case, claims of these rents or amounts when the action of the claim is added to the eviction action.
- Precautionary measures prior to or simultaneously with the claim to those that refer to the 6th rule of Article 770.
- Claims for separation or divorce requested by mutual agreement or by one of the spouses with the consent of the other.

Once the claim for each one of the procedures has been presented, the office in question shall register the claim or written pleadings, agree to their delivery to the competent court, shall order the practice of the corresponding summons and court appointed lawyers, shall require the party to correct any defect and shall send the documents and pleadings presented directly to the court that corresponds.

In addition, in the case that rapid civil judgments, they shall proceed to issue the corresponding appointments for the examinations, hearings or even evictions on the basis of a programmed and computerized system of appointments the principal aim of which is to facilitate the procedure of each one of the referred to matters.

Labor
Royal Decree 1851/2009 of December 4 by which Article 161 bis of the LGSS is developed insofar as the early retirement of workers with a disability to a degree equal to or greater than 45%.

The Royal Decree provides that retirement age shall be reduced to an exceptional minimum of 58 years of age, applied to workers employed by others and including the self-employed in any of the regimes that comprise the Social Security system that accredits during their labor life the minimum contributory period required in order to be able to be eligible for a retirement pension and that are effected by a disability equal or greater than 45%.

To be contributing or in a similar contributory situation on the date of the aggravating cause shall be an indispensable requisite in order to be able to be eligible for early retirement.

This RD entered into effect on the first day of January 2010.

Law 25/2009 of December 22 on the modification of various laws for their adaptation to the Law on free access to service activities and their exercise (omnibus law).

This law modifies the Royal Decree-Law 1/1986 of March 14 on urgent administrative, financial, tax and labor measures in such a manner that the requisite of prior authorization in order to proceed to opening a work center or renewing or pursing works after performing alterations, amplifications or transformations is eliminated.

Henceforth, prior communication of the opening of the work center or the renewal of the duly documented works is sufficient within thirty days of the opening to the competent labor authority who shall inform the Work Inspection and Social Security Administration.

b) Law 31/1995 of November 8 on the Prevention of Labor Risks by which the prevention policy must promote the effective integration of the prevention of labor risks in the system of business management. In addition, the policy on health and safety matters at work shall take into account the specific needs and difficulties of small and medium sized companies.

Likewise, this law adds that companies, according to the number of workers and the nature and dangerousness of the activities, shall be able to produce a plan on the prevention of labor risks provided that it does not involve a reduction in the level of protection of health and security of workers.

c) Law 42/1997, Order of the Inspection of Work and Social Safety, is also object of modification by this law, in such a manner that when the inspection action effects companies in other member States of the European Union and the verified facts may be fined by the member States of origin of the company, these facts shall be able to be communicated to the competent labor authority of the other country that initiates the fine procedure.

In addition, the Work Inspection and Social Security Administration may provide assistance and collaboration to the authorities of the European Union with equivalent competences.

d) And Law 50/1998 of December 30 on Tax, Administrative and Social Order Measures is modified for purposes of contributions of Social Security data in computing support by which the Ministry of Work and Immigration may determine the cases and conditions in which the company shall be able to present in computer support the data relative to their actions in the area of classification, quotation and collections in the Social Security system as well as enrollment and leave corresponding to the process of temporary disability of workers in their service.

Order TIN/3498/2009 of December 23 by which the collective management of hiring in origin for 2010 is regulated.

By means of this Order, the collective management of hiring in origin for a certain period to which only those foreign workers who are not in or residing...
in Spain shall have access is established.

The employment offers, aimed at these foreigners may be of a stable nature, shall have a duration of no less than one year or rather of a temporary nature that will be for a season or campaign with a maximum duration of nine months within a twelve month period or for a work or service the duration of which does not exceed one year.

The General Office on Immigration, taking into consideration the characteristics of the offers presented and the proposal motivating the employee, shall send the offers in a period of five days to the body in charge of the pre-selection in the corresponding country, following the date, place and methodology for the selection of workers.

The offers are preferentially offered in countries with which Spain has executed agreements on the regulation and order of migratory flows or collaboration instruments in this area.

This Order entered into effect on January 1, 2010 and shall remain in effect until December 31, 2010.

**Royal Decree 2007/2009 of December 30 on the revaluation of the Social Security pension system and other public social benefits for the 2010 financial year.**

Through Law 26/2009 of December 23 on the General State Budget for 2010 revaluation criteria for pensions of the Social Security system and other public social benefits are developed.

For that, pensions for permanent disability, retirement, widowhood, orphans and in favor of relatives of the Social Security System in their contributive manner, prior to January 1, 2010 and not concurrent with others shall be revalued by 1%.

The amount of the pension, once revalued, shall be limited to the amount of 2,466.20 Euros, thereby understanding this referred to quantity as the amount of an ordinary monthly payment, without prejudice to the extraordinary payments that could correspond and without this amount exceeding or being able to reach 34,526.80 Euros annually.

The amount of retirement and disability pensions for 2010 in their non-contributive mode, which have been recognized prior to January 1, 2010 or that can be recognized from said date, are established in 4,755.80 Euros annually.

**Law 27/2009 of December 30 on urgent measures for the maintenance and the encouragement of employment and the protection of the unemployed.**

This law establishes a 50% discount on business enrollment in the Social Security System for common contingencies in the cases of temporary employment layoffs, with the duration of the refund coinciding with the unemployment situation of the worker, but in no case may it exceed 240 days per employee.

Likewise, indefinite hiring of workers who are beneficiaries of unemployment benefits is discounted as well as for employees who hire indefinitely until December 31, 2010 unemployed workers who are beneficiaries of benefits and unemployment subsidies shall have the right to a discount of 100% of the business payment to Social Security for common contingencies.

Similarly, this Law 27/2009 of December 30 on urgent measures for the maintenance and encouragement of employment modifies Article 7 e) of the Personal Income Tax relative to the tax liability of the dismissed. For that, in its thirteenth additional provision the tax contribution of the indemnifications received as a consequence of individual or collective dismissals is modified in such a manner that such indemnifications shall be exempt up to the amount of 45 days, with it also being applied to the exemption for unfair dismissal.

In addition, it is relevant to note that this new tax regulation shall be applied
retroactively from March of the previous year, according to that set forth in the thirteenth provision of the mentioned law in such a manner that the collective dismissals and the objective dismissals for economic causes performed from said date shall be able to benefit from this novel exemption.

This new tax measure shall be extended until December 31, 2010.

**Royal Decree 2030/2009 on December 30 by which the Minimum Inter-professional Wage is established for 2010.**

By means of this Royal Decree, the new amounts that shall govern from January 1, 2010 are established both for fixed workers as well as for temporary workers as well as domestic workers.

Therefore, the minimum wage for activities in agriculture, industry and services without distinction to sex or age of the workers is established as **21.11 Euros/day or 633.30 Euros/month**, according to whether the salary is established by days or by months.

The minimum salary computes the remuneration both in terms of money as well as in kind. This salary refers to the legal working day in each activity without including in the case of a daily salary the proportional part of Sundays and holidays. If a shorter day is performed it shall be prorated.