

HOW TO FILE A CLAIM OF LIABILITY OF THE DIRECTOR OF A LIMITED LIABILITY COMPANY IN SPAIN.

a) What are the proceedings?

LAW 1/2000, OF 7 JANUARY, ON CIVIL PROCEDURE- Article 399 and following.

There are 3 main steps:

a) Allegations of both parts.

- claim
- statement of defence

b) previous hearing

- solve any procedural questions
- to fix the facts that must be proved
- proposal of the evidences to practice, and the judges agree or disagreed, admit or not.

c) The hearing: begins with the practice of the trials admitted and oral conclusions.

b) Procedural requirements majority

1. This actions can be both by the company pursuant to a general meeting decision which may be adopted at the requests of any shareholders even where not included on the agenda.

The by-laws may not require a qualified majority for the adoption of such decision.

2. When the company does not bring said action within a month of the date of the agreement or when the meeting decides against the claim for liability, any partner individually or jointly representing a share that permits them to request a general meeting, usually 5 %.

When the responsibility is based on the breach of the duty to loyalty, the partners may exercise the action for liability directly, without the need to submit the decision to the general meeting.

c) Competent Court & territorial jurisdiction

Commercial Court placed at the place where the company has its registered office.

d) Who is legitimized to be the claimant?

- The company:
- The shareholders when the company does not file the claim within a month or does not take the decision.

- The creditors of the company in certain circumstances when the activity of the director has caused and specific damage.

e) Can the judgment be challenged?

- Appeal: Yes

- Cassation appeal: Yes, although its admission is very restricted.

Reference contact in Spain:

Gloria Vinyals

Lawyer

at **Bufete Mañá-Krier Elvira**

gv@bmk.es

+34 93 4878030

