Send to: PUREVDORJ, MUNKHSELENGE
WAKE FOREST UNIVERSITY SCHOOL OF LAW
1834 WAKE FOREST DR
WINSTON SALEM, NC 27109-8758

Time of Request: Monday, November 08, 2010 00:46:30 EST
Client ID/Project Name:
Number of Lines: 836
Job Number: 1842:251845390

Research Information

Service: Terms and Connectors Search
Print Request: Current Document: 1
Source: Doing Business in Spain
Search Terms: § 12.03 Types: Civil and Mercantile

1 of 1 DOCUMENT

Doing Business in Spain

CHAPTER 12 Company Law

1-12 Doing Business in Spain § 12.03

§ 12.03 Types: Civil and Mercantile

By their nature, Spanish companies may be either civil or mercantile. Mercantile companies may be collective, simple limited partnerships or partnerships based on shares, limited liability companies, or joint stock companies.

Civil and mercantile companies are distinguishable, both by their form and by their aims. As to form, a company which is set up by public instrument and which is registered in the Mercantile Registry is a mercantile company. Those which are "freely established" are civil companies. Mercantile companies are those whose aims are commercial operations, that is, those who carry out a business activity. Civil companies are those which are not dedicated to business.

[1] The General Partnership (*Sociedad Colectiva*)

This is an undertaking in which all the partners, collectively and in the partnership's name, assume the same rights and obligations in the proportions which they establish. The creation or constitution of a general partnership is governed by the rules relating to mercantile companies in general. The contract must be executed in a public instrument and the document must be registered with the Mercantile Registry. n1

[a] Obligations of the Partners

The following are the obligations of the partners (*socios*):

-- to contribute the total amount they offered in the partnership agreement;

-- to indemnify damages caused to the partnership with malice, abuse of powers, or gross negligence;

-- to bear losses in the proportions agreed to, or, in the absence thereof, on a *pro rata* basis of the portion of interest of each in the firm;

-- not to compete against the firm; and

-- not to remove or deduct from the common assets more than the amount assigned to each for personal expenses.

[b] Rights of the Partners

The following are the rights of the partners:

-- to participate in the management;

-- to obtain information concerning the accounts and operations of the partnership; and

-- to participate in the profits, in the form provided for in the agreement and, in its absence, on a *pro rata* basis in proportion to each one's interest.

[c] Management of the Partnership

Where the power to manage has been attributed to one or to several partners, the remaining partners may not interfere in management. The partners empowered to manage the partnership shall reach an agreement on all contracts or undertakings of interest to the partnership. n2

[d] Outside Relations

Partners who are not duly authorized to use the partnership's name shall not bind the partnership in their acts and agreements, even if they carry them out on behalf of and in the name of the partnership. Liability for such acts is exclusive to the acting party. All partners of the general partnership, whether or not they have powers to manage it, are bound personally and jointly, with all their property, to the results of the operations, which are carried out in the name of the partnership by persons so authorized.

[e] Partial Rescission of the Contract

There are two cases which may give rise to the partial rescission of the collective contract. They are:

-- the voluntary or imposed separation of one partner who does not exercise the right of termination of the contract (otherwise total dissolution would occur), or

-- the forced exclusion of a partner, by way of sanction. n3

[f] Dissolution

A general partnership shall be dissolved, in the first place, for the reasons stipulated in the agreement and, in addition, for any of the following reasons:

-- completion of the term,

-- the conclusion of the enterprise which constitutes the partnership's purpose,

-- complete loss of the capital,

-- bankruptcy of the general partnership,

-- the death of a partner,

-- the incapacity of a managing partner to administer his property,

-- bankruptcy of a partner, or

-- unilateral termination of the agreement. However, in this case, the partner who voluntarily separates from the firm or provokes its dissolution may not impede the conclusion of the pending business in the manner which is the most convenient for the common interest. And as long as these are not completed, the division of the property and effects of the firm will not be carried out.

[2] Limited Partnership (*Sociedad Comanditaria o en Comandita*)

They are regulated by Articles 145 to 157 of the Commercial Code. These may be "simple" or may have shares. A simple limited partnership has a capital structure like a general partnership. The name of a simple limited partnership will include the name of one or several of the general partners. The general partners are personally and jointly liable for the operations of the partnership as are those limited partners, who permit their name to be used in the name of the partnership. In a limited partnership with shares, the capital of the partners is divided into shares. The directors assume the condition of a general partner, and are therefore personally liable for partnership debts. Constitution of a limited partnership is governed by the general rules for companies. A public instrument and registration with the Mercantile Registry are required.

[a] Obligations of the Partners

The obligations of partners in a limited partnership are essentially the same as those of the partners of a general partnership. They are basically:

-- to contribute the capital established in the agreement. The share capital cannot be less than 60,101.21 euros in a limited partnership with shares;

-- to indemnify the partnership for damages caused with malice, abuse of powers, or gross negligence; and

-- to bear the losses, although each limited partner's liability is no greater than the funds contributed to the partnership, except as mentioned above.

There is no obligation not to compete with the company, provided that the partners are not involved in its management.

[b] Rights of the Partners

The partners in a limited partnership are entitled to the following rights:

-- to be informed as to the progress of the firm's business;

-- to participate in the profits in the manner provided for and, if not provided for, on a *pro rata* basis in proportion to his or her interest or the shares held in the firm; and

-- in a limited partnership with shares, the partner may transfer title, without requiring the consent of the remaining partners, since the shares are negotiable instruments.

[c] Miscellaneous

The rules for management, external relations, partial rescission of the agreement, and the dissolution of limited partnerships differ depending on whether it is a simple limited partnership or limited partnerships with shares. The rules for general partnerships normally apply. However, in the case of limited partnerships with shares, where not expressly

regulated, the rules for *Sociedades Anonimas* subsidiarily apply. n4

[3] Limited Liability Company (*Sociedad de Responsabilidad Limitada*)

[a] Concept

A *Sociedad de Responsabilidad Limitada* (S.L.) is a commercial company with capital divided into "participations." S.L.s are governed by Law 2/1995 of March 3. Participations are similar to shares of a *Sociedad Anonima*, but there are no certificates and they may not be called shares. The terms "Sociedad de Responsabilidad Limitada," "Sociedad Limitada" or their initials "S.R.L." or "S.L." must appear in the company business name. The partners are not personally liable for company debts.

[b] Characteristics

There is no limit on the number of partners. The capital shall not be less than 3,005.06 euros (compared with 60,101.21 euros for a *Sociedad Anonima*), and must be fully paid in. An S.L. may be constituted with one partner, in which case it must comply with the special rules regarding S.L.s with one partner.

An S.L. is considered to be Spanish and must have its domicile in Spain when its principal place of business is in Spain. S.L.s may open branches in Spain or abroad. The law does not permit an S.L. to guarantee or issue bonds or other negotiable securities grouped in issues. S.L.s are constituted by means of a notarial deed which must be registered in the Mercantile Registry. Until registration, the S.L., like the *Sociedad Anonima*, does not have a legal personality. Royal Decree 1332/2006 of November 21 established that a *Sociedad Limitada Nueva Empresa* (*see § 12.03 [43]*)]) can be an S.L.

[c] Directors

Unlike the *Sociedad Anonima*, the directors (*administradores*) may exercise their duties for an indefinite period unless otherwise indicated in the company by-laws. An S.L. may have a sole director, various directors acting jointly or severally or a board of directors. A director may be relieved of his duties at any time by resolution of the general meeting representing the majority of the capital. n5 Liability of directors of an S.L. operates the same as the liability of directors of a *Sociedad Anonima*.

Resolutions of the Board may be challenged by a minimum of five percent of the capital of the company.

Where partners provide services to the S.L., the retribution may not exceed the value of the services provided.

[d] General Meeting of Partners

The general meeting of the partners is called either by the directors or liquidators, if appropriate, with at least fifteen days advance notice. The law permits the call to be made in various forms giving more flexibility to this procedure than that applicable to a *Sociedad Anonima*. The call must clearly express the agenda, besides the formal points such as the name of the company, date and hour of the meeting. The directors will also call a general meeting when it is requested by partners representing at least five percent of the capital.

Notwithstanding the above, the general meeting will be validly constituted to discuss any matter, without having to be called, if there is present or represented all the capital and those attending agree to the agenda and decide to convene the meeting.

Resolutions will be adopted by a majority vote n6 or that established in the by-laws. The majority vote must at least represent one third of the participations in the capital of the company.

Resolutions adopted by the general meeting of the partners, can be objected to in accordance with the Corporate law rules. The general meeting may authorize the granting of credits to partners.

[e] Modifications of the By-laws

Modifications of the by-laws such as the increase or reduction in the capital, extension of the duration of the company, transformation, dissolution, a spin-off or a merger, or other modifications must be resolved by the general meeting. (*See § 12.03[3][d]* for voting requirements.) Modifications must be notarized, registered with the Mercantile Registry and published in the Official Gazette of the Mercantile Registry. The law provides that where new obligations are imposed or individual rights are affected, then the favorable vote of those affected must be obtained.

[f] Participations

The transfer of participations must be executed in a public document.

Except where otherwise provided in the by-laws, *inter vivos* transfers of participations between partners may be freely executed, as well as those between spouses, ascendants or descendants of a partner or in favor of companies belonging to the same group as the transferor. Otherwise, the transfer is subject to the rules and limitations established in the by-laws, and where not provided for therein by law.

Until the company is registered, or in certain cases when the capital increase is not registered, participations may not be transferred. The person acquiring participations may exercise the corresponding rights from the moment the company has notice of the transfer or constitution of a security interest.

The company will have a partner registration book. It will state the original ownership and successive transfers, voluntary or by law, of the participations, as well as the constitution of security interests or other rights in rem on them. Each annotation will indicate the identity and domicile of the owner of the participation or right or charge over the same. Any partner may consult this registry whose care and custody is the responsibility of the administrators. All partners or owners of rights over the participations have the right to obtain a certification of their participations or rights in the same registered in their name. n7

[i] Inter Vivos Transfers

Unless otherwise provided for in the by-laws, a partner who proposes an *inter vivos* transfer of his "participation" or participations in the company must notify the company directors in writing indicating the number and characteristics of the participations intended to be transferred, the identity of the acquirer and the price and other conditions of the transfer.

The transfer is subject to approval by the company which must be expressed in a resolution of the general meeting. The resolution must be on the agenda. The resolution must be adopted by a majority as provided for by law.

The company may only deny consent to the transfer if the transferor is notified via notary of the identity of one or more partners or third parties who will acquire all the participations in the same conditions. Partners attending the meeting will have a right of first refusal regarding the acquisition. The law establishes time limits for the exercise of the purchase partners or by third parties.

The transfer shall be documented by means of a public deed.

[ii] Causa Mortis Transfers

The acquisition of a participation by means of hereditary succession will confer upon the successor or beneficiary of the deceased the status of partner. Nevertheless, the by-laws may establish a right of acquisition in favor of the surviving partners. The price will be the true value of the shares as established by law at the date of death.

[iii] Transfers By Law

When participations are subject to seizure and adjudication to third parties or the creditor of the owner of the participations, the partners or in their absence the company have a preferential right to purchase the shares in the same terms as the adjudication. Also, should the Company acquire its own participations, then these participations have to be transferred or amortised by means of a reduction of the stock capital within the three days of their acquisition.

[g] Financial Statements

The Corporate Law is applicable to S.L.s where not provided for in Law 2/1995. As a result the former law is applicable to requirements regarding the content, form and filing periods for financial statements of S.L.s.

Dividends unless otherwise provided for in the by-laws are distributed on a proportional basis.

All partners have the right to examine the documents, including the management report and auditors report if required, that must be approved by the annual meeting as from the call for the same. The documents upon which the financial statements are based may be examined by partners representing at least five percent of the capital at the domicile of the company, alone or with an accountant, unless otherwise provided for in the by-laws.

The minority partner(s) may in any case appoint an auditor to verify the financial statements. The company shall pay the costs.

[h] Causes of Dissolution

The law establishes a series of causes including: resolution of the general meeting, failure to exercise its activity for three straight years, manifest impossibility to achieve the corporate purpose, deadlock of the governing bodies, and losses that reduce net worth to less than half the capital, unless increased or reduced sufficiently.

The directors may have the duty to call a general meeting to resolve the dissolution. If the directors do not comply with their duty, then any partner may request the directors to call the meeting. If the meeting is not called or does not meet, then any interested party may request the dissolution of the company by the trial court of the company's domicile. The failure by the directors to call a general meeting in this situation gives rise to direct liability to any third party.

According to the Sole Additional Disposition of the Royal Decree Law 10/2008 of December 12, real estate investments and stocks duly reflected in the financial statements will not be considered losses for the depreciation of fixed assets when calculating losses which oblige a Joint Stock Company or Limited Liability Company to reduce share capital or liquidate. This exception will be only applicable to the two financial years ending after December 13, 2008.

[i] Winding Up

From the moment in which the company declares itself in liquidation, the powers of representation of the managing members to make new contracts and undertakings ceases, except those necessary to wind up the company. Unless otherwise agreed by the General Partners Meeting, this function will be fulfilled by the directors. The liquidators may not sign new contracts or undertakings, and must be limited to collecting payments due to the company, settling previously contracted obligations as they fall due, and carrying out pending transactions.

No member may demand delivery of the property which corresponds to him in the division, until all the debts and

obligations of the company have been settled, or the equivalent sum has been deposited. Once the company property has been divided, the entries in the Commercial Registry referring to the limited company shall be cancelled and the company shall thus be wound up.

[4] New Enterprise Limited Liability Company (*Sociedad Limitada Nueva Empresa*)

[a] General Provisions

Law 7/2003 of April 1 created a new type of limited liability company that is an S.L. (*Sociedad Limitada*) aimed at encouraging entrepreneurs to set up new companies with faster and easier formalities n8 and with some tax advantages, called New Enterprise Limited Liability Company (*Sociedad Limitada Nueva Empresa*), hereinafter referred as to "S.L.N.E." The S.L.N.E is a variant of the S.L., and when not expressly legislated the provisions of the S.L. are applicable.

Corporate name. The corporate name shall be formed by the complete name of one of the founders plus an identifying code, which is called Code ID-CIRCE. n9

Object of the company. The purpose of the company shall be one or more of the following activities: agriculture, farming, forestry, fishing, industrial, construction, commerce, tourism, transport, communications, professions or services. These are the activities that are included in the model by-laws provided by the Order of the Ministry of Justice JUS/1445/2003 of June 4. The partners may extend these objects to those activities reserved to other types of companies by law.

Partners. The requirements to set up an S.L.N.E. are the following: (i) partners must be individuals, (ii) there may be no more than five partners, (iii) a partner of an S.L.N.E. that is already incorporated can not constitute another S.L.N.E.

Share capital. It cannot be less than 3,012 euros n10 and not higher than 120,202 euros.

[b] Constitution of the Company

The company must be constituted by means of a notarial deed registered in the Mercantile Registry. Once registered, the S.L.N.E acquires legal personality. All the formalities for the execution and registration of the public deed of incorporation can be made through internet. To speed up all the administrative processes the founders must obtain the Electronic Unified Document (DUE). n11 Once the public deed has been executed, the public notary will send the DUE to the administrative bodies (tax and labour). The public notary will also send a copy of the public deed of incorporation to the Mercantile Registry for filing. Order JUS/1445/2003 of June 4 develops Article 134 of Law 2/1995 introduced by Law 7/2003 and attaches model by-laws. As a consequence there are two types of S.L.N.E.: (i) those following the model or (ii) those introducing at least one change in relation to such model. If the by-laws follow the model, then the registration shall take place within 24 hours as from submission. Should there be any defect or missing data the registrar shall notify the public notary n12 within 24 hours as from submission. n13

[c] The Contributions

The share capital can only be contributed in cash. In-kind contributions are not permitted for this type of company.

[d] The Shares

Unlike an S.L., a partners registry book is not required. The condition of partner is evidenced by means of the public deeds of subscription or acquisition. The transfer of interests can only be made in favour of individuals. Transfers are made according to the provisions for an S.L. As a consequence of a sale of participations the number of partners can exceed five. n14 The law also provides that if for any reason a company (not being an individual) acquires an interest in

an S.L.N.E., it shall be obliged to sell it to an individual within the following three months. n15

[e] Bodies Ruling the Company

The special features of S.L.N.E in this regard are the following:

Partners' meeting. A general partners' meeting can be called by means of registered mail or by any other electronic means giving evidence of receipt. If done by these methods, it is not necessary to publish the call in a newspaper or the Official Gazette of the Mercantile Registry.

Administrative body. The administration can be entrusted to one or several directors. If there are several directors the administrative body can not adopt the form of a Board of Directors. Only the partners can be directors of the company. The dismissal of any directors shall be by a resolution adopted by the majority of the partners. The by-laws can not provide a quorum for this decision exceeding two-thirds of the share capital.

[f] Modification of the By-laws

The special features of S.L.N.E in this regard are the following: The only modifications permitted to the by-laws of an S.L.N.E. are: (i) change of the name, (ii) change of registered address, and (iii) share capital--should the share capital exceed the maximum amount permitted as a consequence of an increase of capital, the company must transform itself into another type of company or become an "ordinary" S.L. The modification of the object of the company is not included within the list of permitted modifications to the by-laws of an S.L.N.E. Whether a modification not exceeding the standardized object (the above described) would require the company to become an "ordinary" S.L., needs to be determined. It would seem logical to permit such a change since at the moment of incorporation it is possible to extend the standardized object of the company by its founders. n16 Consequently, the by-laws should be adapted to the specific requirements of such type of company. If the partner whose name is the one used in the corporate name sells his interest, then the company must change its name to the name of another partner.

[g] Dissolution of the Company

An S.L.N.E. may be dissolved for the general causes of dissolution of an S.L. There are two exceptions:

(1) As a consequence of the equity of the company being reduced below 50 percent of the share capital for a period of six months. The general regulation for S.L.s requires the directors to call for a general meeting to decide whether to dissolve, decrease and/or increase the capital within two months of becoming aware of such a situation.

(2) When the company falls within the scope of the regime provided for in Chapter VI of Title VII of Royal Legislative Decree 4/2004 of March 15 of Corporate Tax. n17

[5] Joint Stock Company (*Sociedad Anonima*)

[a] General Provisions

The *Sociedad Anonima*, or S.A., is governed by Royal Legislative Decree 1564/1989 of December 22 which adopted the revised text of the Corporate Law in accordance with the reform introduced by Law 19/1989 of July 25. Law 2/1995 of March 23 is also in certain aspects applicable to *Sociedades Anonimas*.

- In a *Sociedad Anonima* the share capital is made up of contributions from the shareholders. The shareholders are not personally liable for company debts;

- The term "Sociedad Anonima" or its initials "S.A." must appear in the name of the company;

- The company cannot adopt a name identical to that of a company already in existence;

- Additional requirements regarding the composition of the company name may be established by regulation;

- The S.A., whatever its purpose, is considered mercantile in nature. When it is not governed by law specifically applicable to it, it must abide by the requirements of commercial law;

- The share capital cannot be less than 60,101.21 euros. At constitution a minimum of 25 percent of the total share capital must be paid. All companies, no matter where they were constituted, will be Spanish and will be governed by this law when they are domiciled in Spanish territory;

- All *Sociedades Anonimas* whose principal establishment or operation is established within Spanish territory must have Spain as their domicile; and

- The company will set its domicile within Spanish territory at the place where the center of its effective administration and management exists, or where its principal place of business or operation is. n18

[b] Constitution of the Company

The company will be constituted by means of a notarial deed which must be registered with the Mercantile Registry. Once registered, the *Sociedad Anonima* acquires legal personality.

Agreements between shareholders cannot be contrary to company interests. Law 26/2003 of July 17 modifying Law 24/1988 of July 28 establishes that all the shareholders agreements shall also be filed with the Mercantile Registry for all the companies quoted on a stock exchange if it affects more than 5 percent of the shareholding.

The following must be contained in the constitutional deed:

-- The first and last names, the age and marital status of the grantors if they are physical persons, or the company denomination or name and Mercantile Registry identification number if they are legal persons, and in both cases the nationality, domicile and identification number.

-- The intent of the grantors to incorporate a *Sociedad Anonima*.

-- The cash, assets or rights that each member contributes or is obliged to contribute, indicating the right by which it makes the contribution and the number of shares received in payment.

-- The total amount, at least approximately, of the expenses of the constitution, those to be satisfied, and those merely expected, until the company is constituted.

-- The by-laws. n19

-- The first and last names, the age and marital status of the persons charged with the administration and representation of the company if they are physical persons, or their corporate denomination if they are legal persons, and in both cases their nationality, domicile and identification number; the same information must be given regarding the auditors, if any. If the administrator is a legal entity it must

appoint a physical person to represent it.

-- All of the agreements and conditions that the founding members consider convenient to establish may also be included in the deed, as long as they do not conflict with the law or contradict the basic principles of a *Sociedad Anonima*. n20

The founders and promoters of a company may reserve for themselves special economic rights. The value of these rights, whatever their nature, may not exceed ten percent of the net profits obtained according to the balance sheet after amounts assigned for the legal reserve are deducted. They may have these special rights for no more than ten years. The by-laws must set forth a liquidation system for cases of early extinction of these special rights.

These rights may be represented by nominative certificates different from shares. The by-laws may restrict their transferability.

No company may be constituted if it does not have its capital totally subscribed to and at least one-fourth of the nominal value of each one of its shares paid up.

The company could be founded in one act of "simultaneous foundation," by agreement between the founders, or it could be founded in several acts through public subscription of the shares.

[c] The Contributions

[i] The Contributions and Acquisitions for Consideration

Only goods or rights that can be valued can be contributed. Work or services may never be contributed. Nevertheless, obligatory accessory services may be established in the by-laws for all or some of the shareholders. These contributions are distinct from the capital contributions and may not be included in the share capital of the company.

All contributions are understood to be realized by the owner, unless otherwise expressed.

Monetary contributions must be in the domestic currency. If the contribution was in foreign currency, the equivalent in euros will be determined in accordance with the law.

Non-monetary contributions, whatever their nature, must be the object of a report by one or more independent experts designated by the Mercantile Registrar in conformity with the procedure established by regulation.

The acquisition of assets for consideration by the company within the first two years from the date of its constitution must have been previously approved by the general shareholders meeting if the total amount of the acquisition exceeds ten percent of the share capital. n21

[ii] Share Capital Pending Payment

Shareholders must contribute the portion of share capital not yet paid up to the company in the manner and within the period provided for in the by-laws. When the by-laws do not specifically address the issue, then the administrators decide the manner and period for paying up the remaining outstanding share capital. In the latter case, the requirement to pay will be notified to those concerned or announced in the Official Gazette of the Mercantile Registry. The payment must be made at least one month after the sending of the communication or publication of the announcement. The maximum period for paying up the remaining outstanding share capital is five years.

The shareholder who is not up to date with share capital payments, will not be able to exercise the right to vote. The

value of his shares will be deducted from the share capital for the computation of the quorum. The defaulting shareholder will not have the right to collect dividends, nor to preferential subscription of newly issued shares or convertible bonds. n22

[d] The Shares

[i] Shares and the Rights of Shareholders

The shares represent aliquot parts of the share capital. The creation of the shares that do not correspond to an effective patrimonial contribution will be null.

Shares cannot be issued for an amount that is less than their nominal value.

The issue of shares with a premium is lawful. The premium must be wholly satisfied at the moment of the subscription of the shares.

A share confers upon its legitimate owner the conditions of shareholder. Shareholders have the rights recognized by the General Corporate Law and the by-laws. n23

Certificates which give their holder a right to share in the profits of the company delivered to owners of amortized shares by virtue of redemption do not carry voting rights.

Stock voting trusts are lawful in order to exercise the right to attend the general shareholders meeting and in order to vote.

[ii] Documentation and Transfers of Shares

Shares may be represented by a certificate or by annotation. The shares, in either case, will be considered securities.

Shares represented by means of a certificate can be either nominative or bearer shares, but they will necessarily be nominative when: their price has not been completely paid up, when its transmissibility is subject to restrictions, when they carry accessory services or when special dispositions so require.

The shares represented by annotation on account are governed by legislation regulating the Stock Exchange.

The nominative shares are recorded in a registration book that the company keeps. It records the successive transfers of the shares, the denomination or names, the nationality and the domicile of the successive owners as well as the rights in rem and other charges on them.

Only those who are registered in said book can be considered shareholders by the company.

Restrictions on the free transmissibility of shares are binding on the company only when they are on nominative shares and when they are expressly imposed by the by-laws. By-laws that make the shares practically non-transferable will be null. n24

[iii] Joint Ownership and Rights In Rem

Shares are indivisible. The co-owners of a share will have to designate one person to exercise the rights of shareholder. However, the co-owners will respond jointly to the company for the obligations derived from being a shareholder. The same rule will apply to the other cases of co-ownership of rights in shares.

In the case of usufruct of shares, the shareholder is the legal owner. However, the usufructuary will have the right to the dividends distributed by the company during the usufruct. The exercise of the remaining rights correspond, except when otherwise stated in the by-laws, to the legal owner. The usufructuary is obligated to permit the legal owner to exercise those rights.

In the case of pledging shares the exercise of shareholder rights will correspond to their owner, except when otherwise stated in the by-laws. The pledgee creditor is obligated to facilitate the exercise of those rights. If the owner breaches its obligation to pay up any share capital pending payment, the pledgee creditor may satisfy this obligation or proceed with the realization of the pledge.

If shares are seized, the provisions referred to in the previous paragraph will be observed as long as they are compatible with the type of seizure exercised.

[iv] Company Trading with Its Own Shares

The company cannot subscribe to its own shares or those shares issued by the company dominating it.

Shares subscribed to in violation of the above prohibition, will be the property of the subscribing company. However, they must be paid up by the promoters and the founding shareholders or, if the subscription is due to an increase in the share capital, by the administrators. n25

The company can only accept as a pledge or any other form of security its own shares or those issued by its dominant company within the limits and with the same requirements applicable to acquisitions of the same.

Unrelated companies may not have reciprocal holdings in each other's share capital exceeding ten percent. The same limits are also applicable to holdings between parent and subsidiary companies.

[v] Non-voting Shares

Sociedades Anonimas may issue non-voting shares for a nominal amount not to exceed one half of the paid up share capital.

Non-voting shares cannot be grouped together for purposes of appointing the administrators through the proportional system of representation. The nominal value of these shares will not be taken into account for purposes of the exercise of this right by the remaining shareholders.

All modifications of the by-laws that directly or indirectly harm the rights of the non-voting shares will require the agreement of a majority of the shares pertaining to the affected class. n26

[vi] Redeemable Shares (Acciones Rescatables)

Quoted companies may issue shares that can be redeemable by the company or another partner. They cannot exceed 1/4 of the share capital and must be fully paid up. If an exclusive right to redeem for the company is established, it may not be exercised for three years after issue.

[e] Modification of the By-laws and the Increase and Reduction of Share Capital

[i] General Provisions

Modification of the by-laws must be approved by the general shareholders meeting. To do so, the following requirements shall be met:

-- The administrators or the shareholders making the proposal must formulate in writing the reason for the same.

-- The points to be modified must be expressed specifically and clearly in the call.

-- The call must state the right that corresponds to all of the shareholders to examine in the corporate domicile the entire text of the proposed modification and the report justifying such modification and to request the handing over or the free delivery of said documents.

-- The agreement must be adopted by the general shareholders meeting in conformity with Article 103 of the General Corporate Law. n27

The agreement must be drawn up in a public deed, registered with the Mercantile Registry and published in the Official Gazette of the Mercantile Registry.

Except when otherwise provided in the by-laws, the change of the corporate domicile within the same municipality will not require the agreement of the general shareholders meeting; the administrators of the company may approve such a move. Said modification must be drawn up in a public deed that will be registered in the Mercantile Registry and will be subject to that discussed below.

In order to register the change of the corporate name, the change of domicile, the substitution and/or any other modification of the company purpose in the Mercantile Registry, said modification must be published in two newspapers with a large circulation in the respective province or provinces. The modification cannot be registered with the Mercantile Registry without this announcement. Once the change of the company name is registered in the Mercantile Registry, it will be noted in other Registries by means of marginal notes.

[ii] Capital Increase

The increase in share capital may be carried out through the issue of new shares or through an increase in the nominal value of the existing shares.

Twenty-five percent of the value of each one of the shares must be paid up once there is an increase in capital.

The increase of share capital must be approved by the general shareholders meeting in accordance with the requirements for modification of the company by-laws.

All shares previously issued must be entirely paid up when the contribution for the share capital increase is in cash, except in the case of insurance corporations. The increase may be realized, however, if the amount pending does not exceed three percent of the share capital.

When the interests of the company so require, the general shareholders meeting may agree to approve the total or partial suppression of preferential subscription rights.

Preferential subscription rights do not arise when the increase of capital is due to the conversion of bonds into shares or the absorption of another company or part of the assets spun-off from another company.

[iii] Capital Reduction

The reduction of capital may have as its objective:

-- The refund of the contributions;

-- The remission of share capital pending;

-- The constitution or increase of the legal or the voluntary reserves;

-- The reestablishment of an equilibrium between the capital and the net worth of the corporation, diminished due to losses.

The reduction may be realized by decreasing the nominal value of the shares, their amortization or grouping in order to exchange them. n28

When there has been a reduction in capital the company may distribute dividends once the legal reserve reaches ten percent of the new capital.

The agreement to reduce the share capital to zero or below the minimum legal amount may only be adopted when it is agreed simultaneously to transform or increase its capital up to a quantity equal to or superior to the mentioned minimum amount. In any event, preferential subscription rights must be respected.

Please *see § 12.03[3][h], above*, regarding exclusion of certain losses from the calculation to determine whether the company is legally obliged to reduce capital or liquidate.

[f] The Annual Accounts

The annual accounts, or financial statements, are made up of the balance sheet, the profit and loss account, a statement of the net worth modifications during the year, a statement of cash-flow and the annual report. The annual accounts must be published in euros.

The balance sheet shall include the assets, liabilities and the net worth of the company, according to the modifications set out in Law 16/2007 of July 4 approving the new accounting principles for harmonisation with EU laws.

These documents, which form a whole, must be drafted with clarity and faithfully reflect the company assets, the financial situation and the company results in accordance with the General Corporate Law and the Commercial Code. n29

The annual accounts and the management report must be revised by auditors. Companies that can submit abbreviated balances do not have to meet this obligation.

The auditors will also verify the concordance between the management report and the annual accounts for that year.

The persons that must exercise the auditing of the accounts will be named by the general shareholders meeting before the year to be audited ends. They will be appointed for an initial period of time that cannot be less than three years or more than nine years counting from the date the first year to be audited is initiated. They may be reelected for periods of three years by the general meeting once the initial period expires.

The administrators of the company are obligated to formulate, within three months counting from the closing of the company year, the annual accounts, the management report and the proposal for distribution of earnings as well as the consolidated accounts and the report when appropriate. The annual accounts must be deposited at the Mercantile Registry within one month of their approval by the general meeting. Failure to deposit the accounts may result in the

levying of a fine. Furthermore the Company shall not be able to make further registrations except for some certain corporate decisions.

The general shareholders meeting will resolve the distribution of earnings for the year in accord with the approved balance.

In any event, an amount equal to ten percent of earnings for the year will be allocated to the legal reserve until it reaches, at least, 20 percent of the share capital. While the legal reserve does not exceed the indicated limit, it may only be used to compensate losses if there are no other disposable reserves sufficient for this purpose.

Once the legal requirements or the requirements of the by-laws are covered, dividends may only be charged to yearly profits or to reserves that are freely disposable if the accounting net worth is not, or as a result of the distribution does not become less than the share capital. If there are any losses from prior years that make the net worth of the corporation less than the amount of the share capital, the profits will be used to compensate these losses.

The distribution of dividends to the ordinary shareholders will be realized in proportion to the capital they paid up.

[g] Transformation, Merger and Spin-offs

Chapter VIII of the Corporate Law, regarding Transformation, Merger and Spin-offs has been revoked by Law 3/2009, of April 3, on Structural Modifications of the Mercantile Companies. Law 3/2009 addresses the transformation, merger, spin-off or global assignment of assets and liabilities, including the international transfer of the corporate domicile of any company considered as mercantile.

[i] Transformation

This is the change of form, in the case of a *Sociedad Anonima* into any type of mercantile company, including a European Corporation or an economic interest group, or *vice versa.* The transformation must be agreed to, in all cases, by the general meeting of shareholders, with the requirements and formalities of Article 103 of the Corporate Law as referred to above. The agreement must approve the balance sheet of the company. The resolution must be published once in the Official Gazette of the Mercantile Registry and in the largest-circulation newspapers of the province where the company has its head offices, unless the resolution has been communicated in writing to all the partners as set forth in article 14.2 of Law 3/2009.

The transformation must be drawn up in a public instrument, which is to be registered with the Mercantile Registry, and which will, in all cases, contain those elements required by the law for the constitution of the company in the form adopted, the list of the shareholders who have made use of their right of separation, and the capital which they represent, together with the shares distributed to each shareholder in the transformed company.

The shareholders which did not vote in favor of the transformation may be separated from the company in accordance with the dispositions of the law of limited liability companies.

The members who, due to the transformation, assume a personal liability for the company debts and have not voted in favor of the transformation agreement shall be automatically separated from the company, unless they adhere in a certifying way to the agreement in one month term. The valuation of the shares corresponding to the shareholders who are separated from the company will be carried out in accordance with the dispositions of the law of limited liability companies.

[ii] Merger

The merger of mercantile companies into a sole company will imply the extinction of each one and the transfer of their assets to the new entity. The new entity will acquire by universal succession the rights and obligations over said assets. If the merger results in the absorption of one or more companies by another company already in existence, the latter will acquire the assets of the absorbed companies while the others are extinguished. The absorbing company will, as appropriate, increase its share capital.

The shareholders of the extinguished companies will participate in the new company or the absorbing company receiving a number of shares proportional to their respective interest. In order to adjust the trade-in value of the shares, the shareholders may receive cash compensation as long as it does not exceed ten percent of the nominal value of the shares attributed to them.

The merger plan must be drafted by the administrators of the companies that merge. The plan becomes ineffective if it has not been approved by the general shareholders meeting of all of the companies that participate in the merger within the six months following the date of it. n31

[iii] Spin-offs

Spin-offs involve the extinction of a mercantile company with the division of all its assets in two or more parts, each one of which is to be assigned in a block to a newly created company or to an already existing one; and the sale of company assets without extinguishing the company. The assets are transferred in a block to one or various companies new or already existing.

The spin-offs which result in the extinction of the company may only be approved if the shares of said company are completely paid up.

The companies benefiting from the spin-off may have a different form from the company that is extinguished. n32

[h] Organs of the Company

[i] The General Shareholders' Meeting (Junta General de Accionistas)

The term "general shareholders meeting" is used both for the body formed by the entirety of shareholders as well as for their coming together in a meeting. It refers to the meeting of the shareholders in the registered offices of the company, duly convened to debate and decide by majority vote on such company matters as are of its competence.

It is the supreme body of the company, but is subject to the following limitations:

-- not to encroach on the powers of the directors,

-- to respect the by-laws,

-- to respect the individual rights of the shareholder, and

-- to respect the company's interests.

The general shareholders meeting can be ordinary, extraordinary and universal.

The ordinary general shareholders meeting must meet within the first six months of each company year, in order to approve the company administration, the accounts of the previous year and decide how earnings will be distributed.

The general shareholders meeting is validly constituted on the first call when the shareholders, present or represented, hold at least 25 percent of the subscribed share capital with a right to vote. Law 26/2003 of July 17 establishes the possibility to vote by mail or by electronic means as long as the identity of the person voting is guaranteed. The by-laws may set a superior quorum. It must be called with at least one month advance notice. Shareholders owning at least 5 percent of the stock capital may ask for the inclusion of new topics on the Agenda within the five days after the call has been published.

On second call the constitution of the general shareholders meeting will be valid whatever the number of shareholders present or percentage of share capital represented. The by-laws may set a specific quorum for the second call. The second quorum must be less than the quorum in the by-laws or established by law for the first call.

The special general meeting may be called by the administrators whenever they deem it to be in the interest of the company. The administrators must also call this meeting when shareholders owning at least five percent of the share capital so request. The request must list the matters to be considered at the meeting. In this case the meeting must be called to occur within the thirty days following the day the administrators were notified by public notary of the request to call the meeting. n33

Whenever all the share capital that is paid up is present and those in attendance unanimously accept holding a meeting, then a general meeting (*junta general universal*) may be validly constituted to consider any matter.

The appointment of the administrators and the determination of their number shall be determined in the general meeting when the by-laws only establish a minimum and maximum. Additionally, the general meeting may, in the absence of any provision in the by-laws, set the guarantees that the administrators must provide or relieve them of this duty.

[ii] Directors

Unless otherwise provided for in the by-laws, it is not necessary for an administrator to be a shareholder. Members of the Board will be selected by vote. n34 The administrators are appointed for the period indicated by the company by-laws. Six years is the maximum permitted. They may be elected more than once for periods of equal duration (Art. 126). The company, in and outside of Court, will be represented by the administrators in accordance with the by-laws.

Authority to represent the company will extend to all those acts included in the company purpose set out in the by-laws. Any limit on the representative powers of the administrators, although registered in the Mercantile Registry, will not be effective as to third parties.

The administrators are liable to the company, to the shareholders and to the company creditors for harms that they may cause resulting from acts contrary to the law or the by-laws or those acts done without the diligence expected from those exercising such a position.

All members of the Board of Directors that carry out the harmful act or adopt the harmful agreement will be jointly and severally liable unless they can prove that they did not intervene in its adoption and execution and did not know of its existence or knowing of its existence did all that they could to avoid the harm or, at least, expressly opposed it. Law 26/2003 of July 17 has partially modified Royal Legislative Decree 1564/1984 and has also established liability for "de facto" directors.

Ratification, authorization or adoption by the general shareholders meeting of the harmful act or agreement does not exonerate a director from liability.

Art. 75 of Organic Law 3/2007 of March 22 provides that companies having the obligation to deposit non-abbreviated annual accounts shall do their best efforts to achieve a balanced presence of women in their Board of Directors within

the term of eight years as from the entry into force of this law.

[iii] Derivative Actions for Breaches of Fiduciary Duty

Derivative actions against the directors may be brought by the corporation after agreement at the general shareholders meeting. The agreement may be adopted although it is not stated on the agenda. The by-laws may not establish a majority different from that provided for in Article 93 for the adoption of this type of agreement.

At any time a general shareholders meeting may settle or waive the action as long as it is not opposed by shareholders representing five percent or more of the share capital. The agreement to initiate an action or to settle will result in the dismissal of the affected directors.

Approval of the annual accounts will not impede exercise of an action for liability, nor suppose waiver of the action agreed to be exercised.

The shareholders, according to Article 100, may request the calling of a general shareholders meeting in order to decide whether to exercise the action for director's liability and initiate jointly the shareholders derivative action when the directors do not call the general shareholders meeting for said purposes, when the company does not initiate the action within one month from the date of the adoption of the corresponding agreement or when it would have been contrary to an action for liability.

The creditors of the company may exercise a liability action against the directors when it has not been exercised by the company or shareholders as long as the assets of the company are not sufficient to satisfy its debts.

If the equity of the company is reduced to half of the stock capital, the directors must call for a general shareholders meeting within two months. Should they fail to do so, the directors shall be considered joint and severally liable for the obligations assumed from that moment. n35

[iv] Individual Actions for Liability

Actions that may correspond to shareholders and third parties for acts of the directors that directly harm their interests may be brought.

[i] Dissolution of the Company

A *Sociedad Anonima* will be dissolved:

-- By agreement of the general meeting adopted in accordance with Article 103.

-- Due to termination of the period set in the by-laws.

-- Due to the conclusion of the business that made up its purpose, the manifest impossibility of realizing the company purpose or paralyzation of the corporate governing bodies in such a way that its functioning becomes impossible.

-- Because of losses that reduce net worth of the company to less than half the share capital, unless the share capital is increased or reduced by the necessary amount, as long as the application of the bankruptcy status is not mandatory.

-- Please *see § 12.03[3][h], above*, regarding exclusion of certain losses from the calculation to

determine whether the company is legally obliged to reduce capital or liquidate.

-- Due to a decrease in share capital below the legal minimum.

-- Because of any other cause established by the by-laws.

The company will be dissolved because of bankruptcy when it is expressly agreed to do so as a result of a judicial resolution. n36

[j] Shareholders Agreement

Laws 26/2003 of July 17 and Law 47/2007 of December 19 modify Law 24/1988 concerning the Stock Market and provides new filing obligations with the Mercantile Registry. All shareholders agreements related to listed companies must be filed to be effective. Other obligations in order to provide further transparency and information to the market have also been included in the new regulations.

[k] European Joint Stock Company--"European Corporation" (*Sociedad Anonima Europea* or "S.E.")

This company is permitted under Law 19/2005 of November 14. The S.E. will be governed by the laws by which the Statute of the European Corporation was approved (CE) n. 2157/2001 by the Council on October 8, 2001, by Law 19/2005 of November 14 and by the Law 31/2006 of October 18, modified by Law 3/2009 of April 3, that implements the Directive 2001/86/EC, of October 8, 2001 ruling the involvement of employees in this type of corporation.

The basic characteristics of an S.E. are the following:

-- If its central administration is in Spain it must be a resident of Spain. If it subsequently moves its central administration from Spain, it will have to normalize its situation within one year, by transferring its residence or returning its administration to Spain within this established time frame. Otherwise, it will have to be dissolved.

-- It should be registered in the Mercantile Registry in the same manner as an S.A.

-- In the event an S.E. decides to move its residence outside of Spain:

-- the shareholders that vote against this will have the right of separation,

-- creditors prior to the announcement of the transfer will have the right to oppose, and

-- the Government will also be able to oppose due to public interests.

-- The Spanish Government has a right of opposition due to public interest, as do the shareholders, if one or several Spanish companies merge with one another to constitute an S.E. in another member state.

-- When an S.E. holding company is created, prior to depositing its constitution with the corresponding Mercantile Registry, it must register the company's constitutional project. The shareholders' meeting, which shall vote on the proposal, will not be allowed to meet until one month has elapsed from the publication by the Mercantile Registry of the deposit of the constitutional project.

-- It is possible to transform an S.A. into an S.E.

-- Companies will be permitted to choose between the "individual system" and "dual system," a situation which supposes a true novelty under Spanish Law:

-- Individual: The Law for administrators of joint stock companies will be applicable to its administrative body with some peculiarities. There is only a management body.

-- Dual: There will be both a management body and a Controlling Counsel. The management, in accordance to the Statutes, will be able to appoint one or more directors that act severally or jointly. The Board of Directors will be comprised of 3 to 7 members.

-- For the Controlling Counsel the provisions of Joint Stock Companies Law for the Board of Directors will be applicable; and they will be able to agree that certain management decisions will require its prior authorization. The representation of the company in front of members of the management will be the responsibility of the controlling counsel.

-- Members of the management and of the Controlling Counsel will have the same responsibilities as those of administrators of an S.A.

-- A general shareholders' meeting should be called following a one-month legal notice from the management or by the Controlling Counsel when they believe it to be of interest to the company.

FOOTNOTES:

(n1)Footnote 1. According to Article 125 of the Commercial Code: The incorporating document (*escritura social*) of the general partnership shall contain the following:

-- full names and addresses of the partners;

-- name of the partnership;

-- full names of the partners who will be entrusted with management and the use of the partnership's name;

-- the capital contributed in cash, credits, or notes, indicating the value given to these or the bases of the valuation to be made;

-- the duration of the partnership; and

-- such amounts, where applicable, as allocated to each managing partner annually for his personal expenses. The document may also include all the other legitimate agreements and special conditions which the partners may wish to establish.

(n2)Footnote 2. According to Article 129 of the Commercial Code: "If the management of the general partnership is not limited by a special act to one of the partners, all shall have the power to be involved in the management and handling of the common business, and the partners present shall agree in respect of all contracts or undertakings which may be of interest to the partnership."

(n3)Footnote 3. According to Commercial Code, Articles 125 to 144, forced exclusion shall take place for any of the following causes: using the joint capital and partnership's name for personal business; for interference in the management functions by a partner not entitled to manage the company; for failure to supply the joint fund with the

capital stipulated by each, etc.

(n4)Footnote 4. *See* Articles 155 and 157 of the Commercial Code:

> 155.1. The general partners shall necessarily be in charge of the administration of the partnership. They will have the capacity, the rights and obligations of directors of a company. A new director will become a general partner from the moment he or she accepts the appointment.
>
> 155.2. The removal of a director will require the modification of the partnership by-laws in accordance with the following article. If the removal occurs without just cause, the partner will have the right to indemnification for damages caused by such removal.
>
> 155.3. Dismissal, as director, of the partner with unlimited liability, terminates his unlimited liability with regards to partnership debts incurred subsequent to the publication in the Mercantile Registry of the dismissal.
>
> 157. Independent from the causes for dissolution mentioned in the Corporate Law, the partnership will be dissolved due to death, dismissal, incapacity, or opening of the liquidation process in the bankruptcy of all of the general partners unless within six months, and by means of modification of the by-laws a new unlimited liability partner joins the company or it is agreed that the partnership be transformed in another type of entity.

(n5)Footnote 5. The by-laws may not require more than two thirds of the votes corresponding to the participations which divide the capital of the company.

(n6)Footnote 6. Exceptionally, the increase or decrease in capital or other modification of the by-laws that does not require a qualified majority will require more than half of the favorable vote of the participations representing the capital. The transformation, merger or spin-off of the company or the suppression of the preferential right to increases in capital, the exclusion of partners and the authorization of directors to engage in the same, analogous or complementary type of activity as that of the company will require two thirds of the vote of the participations representing the capital. The by-laws may require higher percentages but not unanimity.

(n7)Footnote 7. Law 7/2003 of April 1 introduced the possibility of having non-voting participations. The regulations of this type of participation are the same as for non-voting shares of a joint stock company (S.A.).

(n8)Footnote 8. The European Letter for the small-size enterprises (*Carta de Feira*), adopted in June 2000 by the European Council of Lisbon, established a commitment by the member states to create a legal and administrative framework aimed at encouraging business by means of implementing faster and easier procedures to incorporate companies and increasing the mechanisms for filing such companies with public registries.

(n9)Footnote 9. The obtainment of the ID-CIRCE Code is ruled by Instruction of the Ministry of Justice of May 30, 2003. This instruction provides that the ID-CIRCE Code can be obtained either at *www.circe.es* or *www.ipyme.org* or directly from the General Directorate for Medium and Small Enterprises. Once the code is obtained the entrepreneur must apply for the name at the Central Mercantile Registry. This application can be made by the public notary that notarises the public deed of incorporation.

(n10)Footnote 10. The minimum share capital for an S.L. is 3,005.06 euros.

(n11)Footnote 11. This document enables the company to speed up all the formalities. It is regulated by Royal Decree 682/2003 of June 7.

(n12)Footnote 12. The shareholders may decide to replace the Public Notary by a representative freely chosen by them.

(n13)Footnote 13. Please note that the registration is considerably quicker than for other companies.

(n14)Footnote 14. This seems to make the initial limit somewhat artificial.

(n15)Footnote 15. The law fails to make clear whether the acquisition is only by operation of law or also when done by agreement between the partners.

(n16)Footnote 16. In this last case, legally speaking it is not a transformation.

(n17)Footnote 17. This regime concerns "Sociedades Patrimoniales." The exception is now non-existent in practice as the regime for "Sociedades Patrimoniales" is no longer in force.

(n18)Footnote 18. If the registered domicile is different from the one mentioned, then third parties may consider either of the two as domiciles. Article 6, paragraph 2.

(n19)Footnote 19. The by-laws that regulate the functioning of the company will mention:

(a) The company name.

(b) The company purpose.

(c) Duration. It may be unlimited.

(d) The date it commences operations.

(e) The company domicile, and the competent organ to decide or approve the creation, the elimination or the transfer of its branches.

(f) The share capital, the amount not yet paid up, the manner and the maximum duration in which the rest of the share capital must be paid up.

(g) The number of shares in which the share capital has been divided; their nominal value; class and series, if more than one type exists, specifically stating the nominal value; number of shares and rights of each class; the price effectively paid; and if they are represented by certificates or annotations. If they are represented by a certificate, then it must state whether they are nominative or bearer and if the issuance of multiple certificates is anticipated.

(h) The structure of the body entrusted with the administration of the company, determination of the administrators who will have authority to represent the company and their operational system according to the General Corporate Law and the regulations of the Mercantile Registry. The number of administrators, or at least the minimum and maximum number, the duration of the duties, and their system of compensation, if any, must also be expressed.

(i) The manner of deliberation and adoption of the agreements of the company bodies.

(j) The date of closing of the company year. If not provided for in the by-laws, it will be understood that the company year ends on the 31st of December of each year.

The restrictions to the free transfer of shares, if any.

(k) The rules for accessory services provided by the shareholders, if any, mentioning expressly their content, whether provided free of charge or for consideration, the actions connected with the duty to provide them and any penal clauses related to their non-performance.

(l) The special rights that may be reserved for the promoters or founders of the company.

Article 9.

(n20)Footnote 20. Article 15, number 1 of the law: "The parties to acts and contracts done in the name of the company prior to its registration in the Mercantile Registry are jointly liable unless their effectiveness was conditioned on registration and/or subsequent ratification of the act or contract by the company."

(n21)Footnote 21. Article 41, number 2 provides that this limit will not apply to acquisitions included in the ordinary course of business of the company, nor will they apply to those that can be verified on the stock exchange or through public auction.

(n22)Footnote 22. Article 46, numbers 1, 2, and 3: "1. The purchaser of shares that are not paid up responds jointly with all of the transferors that preceded him. At the election of the administrators of the corporation, the purchaser will also be liable for payment of the part not yet paid up. 2. The liability of the transferors will last for three years from the respective transfer date. Any agreement contrary to joint liability will be null 3. The purchaser that pays could request the totality of the payment from the subsequent purchasers."

(n23)Footnote 23. According to the General Corporate Law, and except for that provided therein, the shareholder will have the following rights:

Article 48.

(a) To participate in the distributions of company earnings and in the resulting value obtained from liquidation.

(b) Preferential subscription rights upon the issue of new shares or obligations convertible into shares.

(c) To attend and vote at the general shareholders meetings and to object to company agreements.

(d) To information.

(n24)Footnote 24. Article 64. Restrictions in the by-laws on the transmissibility of shares will only be applicable to acquisitions causa mortis when expressly established.

(n25)Footnote 25. The company may acquire its own shares or those of the dominant company, in the following situations:

Article 77.

(a) When its own shares are acquired in execution of an agreement of capital reduction adopted by the general shareholders meeting.

(b) When the shares form part of an acquired estate.

(c) When the shares that are completely paid up are acquired free of consideration.

(d) When the completely paid up shares are acquired as a consequence of a judicial decision to satisfy a debt of the owner of said shares owed to the company.

(n26)Footnote 26. Non-voting shares confer the following rights:

(a) To receive the minimum annual dividend that is established in the by-laws. Once the minimum dividend is approved, the owners of non-voting shares will have the right to the same dividend that corresponds to the ordinary shares.

If profits that can be distributed exist, the company will be obligated to approve the distribution of the minimum dividend referred to above. If there are no profits to distribute or if they are not sufficient in quantity, the part of the minimum dividend that has not been paid must be satisfied within the next five company years. While the unpaid part of the minimum dividend remains outstanding, non-voting shares will have the right to vote during the said five-year period at general and special shareholders meetings.

(b) In case of liquidation of the company, their holders have the right to be reimbursed for the paid out amount of their shares before any amount is distributed to any other shareholders.

(c) These shares will not be affected by the reduction of share capital due to loss, irrespective of the type of reduction, except when the reduction surpasses the nominal value of the remaining shares. If, as a result of the reduction, the nominal value of the non-voting shares exceeds half of the paid up share capital, the proportion established in the by-laws must be restored within a maximum of two years. If not, the company will be dissolved.

When all of the ordinary shares are amortized as a result of a reduction in capital, the non-voting shares may vote until the anticipated legal proportion to the ordinary shares is reestablished.

(d) The other rights of the ordinary shares, except those before mentioned.

(e) Preferential purchase rights and the right to recover the vote will be stated by the by-laws.

(n27)Footnote 27. Article 103: The ordinary or special general shareholders meeting may validly approve the increase or decrease of capital, and any other amendment of the by-laws, the issue of bonds, the supression or limitation of the pre-emption right of new shares, as well as the transformation, merger, spin-off, or global assignment of assets and liabilities and transfer of domicile abroad, if 50 percent of the shareholders and paid up share capital are present or represented on first call if the shares are nominative or two thirds of the latter when they are bearer shares. On second call, the majority of the shareholders and the representation of 25 percent of the paid out capital will suffice. If the meeting is attended by less than 50 percent of the shareholders, at least two thirds of the shareholders must vote in favour.

(n28)Footnote 28. Article 167. Creditors of the company may not object to a reduction in the share capital in various circumstances, including when the reduction is charged to profits or voluntary reserves or via amortization of shares acquired by the company free of charge. In these cases the amount of the nominal value of the amortized shares or of the decrease in the nominal value of the shares must be allocated to a reserve. It will only be possible to dispose of

this reserve by meeting the same conditions required for a reduction of the share capital.

(n29)Footnote 29. Abbreviated balances and state of modifications in the net worth may be drawn up by companies that, for two consecutive years on the closing date of the company year, meet at least two of the following requirements (not applicable to quoted companies):

(1) That the total value of the items in assets does not surpass 2,850,000 euros;

(2) That the annual turnover is no greater than 5,700,000 euros;

(3) That the average number of workers employed during the year does not surpass 50 (Art. 175).

An abbreviated profit and loss account may also be formulated by companies that, for two consecutive years on the closing date of the company year, meet the following requirements:

(1) That the total value of assets does not exceed 11,400,000 euros;

(2) That the annual turnover is no greater than 22,800,000 euros;

(3) That the average number of workers hired during the year does not surpass 250. (Art. 176).

(n30)Footnote 31. Article 40 of the Law 3/2009:

(1) The merger agreement, when involving *Sociedades Anonimas*, must be adopted by the general shareholders meeting of each one of the companies, comply with the plan and meet the following requisites:

(a) The call and the agreement to be adopted must respect those matters established in Article 96 and, if appropriate, Article 98 of the Joint Stock Companies Act.

(b) The call must be given at least one month in advance of the date set for the general shareholders meeting; it must include the minimum points of the plan legally required and state the rights that correspond to all of the shareholders, bondholders and owners of special rights, to examine at the corporate domicile the documents indicated in Article 39 of Law 3/2009 and the right to receive or have delivered the entire text of the same.

(c) When the merger involves the creation of a new company, the merger agreement must include the legally required information regarding the constitution of the company.

(d) The agreement of the merger, once adopted, will be published once in the Official Gazette of the Mercantile Registry and in one newspaper of extensive circulation in the provinces where each one of the corporations have their domicile. The right of each of the shareholders and the creditors to obtain the entire text of the adopted agreement and balance of the merger must be stated in the announcement, as well as the opposition right of the creditors.

(2) The merger will require the consent of all of the shareholders that, by virtue of the merger, will have unlimited liability for the corporate debts, as well as the consent of the partners of the extinguished companies which must assume personal obligations in the company resulting from the merger.

Article 44 of Law 3/2009, (a)

(1) The merger cannot be realized until a month has passed from the date of the last notice of the agreement of the general shareholders meeting. During this time period, the creditors of each one of the corporations could oppose the merger if their credit was originated before the publication date of the merger project and is not due and payable, and until the credits are guaranteed.

(2) The right of opposition stated in the previous paragraph must expressly be mentioned in the merger agreement notice.

(3) The creditors may exercise the right of opposition in the same terms as those of the remaining creditors when the merger was not approved by the assembly of the creditors.

Article 41.2 of Law 3/2009, (b)

The merger agreement will require the consent of the holders of special rights distinct from shareholders' if they do not enjoy, in the new company resulting from the merger, the rights equivalent to those that they enjoyed in the extinguished company unless the modification of such rights was approved by the assembly of these holders.

Article 45 of Law 3/2009, (c)

(1) The merging companies must have the merger agreement that has been approved by the shareholders meeting of the respective merging companies incorporated in a public deed. The public deed must also contain the merger balance of the companies to be extinguished.

(2) If the merger is realized by creation of a new company, the public deed must also contain the legal requirements for the incorporation of the same. If it will be realized through absorption, the public deed must contain the modifications of the by-laws that have been approved by the absorbing company, the reason for the merger and the number, class and series of the shares that must be delivered to each one of the new shareholders.

(3) Once the deed of incorporation is registered with the Mercantile Registry, it will be published in the Official Gazette of the Mercantile Registry in accordance with the requirements of the Mercantile Registry Regulations. Entries of the extinguished company(s) in the Registry will then be cancelled.

(4) The efficacy of the merger will remain subordinated to the registration of the new corporation or, in its case, to the registration of the absorption.

Article 49 of Law 3/2009, (d)

If the absorbing company was the shareholder of all the shares of the absorbed company, then no increase in capital will occur, nor will it be necessary that the administrators of the companies issue reports regarding the merger plan, nor that one or several independent experts give their opinion concerning the same, the approval of the merger by the general shareholders meetings of the company or absorbed companies, and the mention in the merger project of sections 2, 6, 9 and 10 of article 31.

Article 47 of Law 3/2009, (e)

(1) No merger can be appealed after its registration, as long as it has been carried out in accordance with the provisions of the Law 3/2009, notwithstanding the rights of the partners and third parties to the damages caused. The time period for the exercise of the action of appeal will lapse three months from the date that the merger could be opposed by the person claiming nullity.

(2) The judgment declaring the nullity must be registered in the Mercantile Registry. It will be published in the Official Gazette of the Mercantile Registry. This will not affect, on its own, the validity of rights and duties that arose after the registration of the merger which correspond to the absorbing company or the new company resulting from the merger. The companies participating in the merger will be joint and severally liable for the obligations of the absorbing company of the new company.

(n31)Footnote 32. Article 255.

(1) In addition to the requirements for a merger plan, the following must be included in the spin-off plan:

(a) The precise designation and distribution of the elements of the assets and liabilities that must be transferred to each one of the beneficiary companies.

(b) The distribution among the shareholders of the company spinning off the shares or participations that correspond to them in the capital of the beneficiary corporations and the criteria upon which the distribution is founded (except in cases of segregation).

(2) Where there are two or more beneficiary companies, as long as the shareholders of the company spinning off its assets are not attributed shares, units or quotas of all the beneficiary companies, the individual consent of those affected will be required.

(3) When an asset of a company that is to be dissolved has not been attributed to a beneficiary corporation in the spin-off plan and no clear interpretation can be made concerning its distribution, this element or its collateral will be distributed among all of the beneficiary corporations in proportion to the assets attributed to each one of the corporations in the spin-off plan.

(4) Where the company spinning-off its assets is to be dissolved, and a liability is not attributed to a beneficiary corporation by the spin-off project, and no clear interpretation can be made concerning its distribution, all beneficiary companies will assume joint liability for it.

(n32)Footnote 33. Article 103:

(1) To validly approve the increase or decrease of capital and any other amendment of the by-laws, the issue of bonds, the supression or limitation of the pre-emption right of new shares, as well as the transformation, merger, spin-off, or global assignment of assets and liabilities and transfer of domicile abroad, a general or special meeting must have on first call the attendance either present or represented of shareholders that hold at least fifty percent of the subscribed to voting share capital.

(2) On second call the attendance of twenty-five percent of said share capital will be sufficient. When shareholders representing less than fifty percent of the subscribed to share capital with the right to vote are in attendance, the agreements referred to in the above section may only be validly adopted by a favorable vote of two-thirds of the share capital present or represented at the meeting.

(3) The company by-laws may raise the quorum and majorities provided for in the above section.

(n33)Footnote 34. The appointment of the administrators will be effective from the moment they accept. Their acceptance must be presented for registration with the Mercantile Registry within ten days following the acceptance date. The acceptance must state the first and last name, identification number, that the administrator is of age, domicile and nationality and, for those administrators that have authority to represent the company, if they may act individually or must act jointly (Art. 125). Unlike an S.L., in an S.A. generally rights must be proportional to interests in the capital.

(n34)Footnote 35. Law 19/2005 of November 14 has limited liability to acts carried out after that situation takes place.

(n35)Footnote 36. Article 261 (1) Once the period of duration of the company has terminated, it will be dissolved by operation of law unless prior to that date the duration was expressly extended and registered with the Mercantile Registry.