

SOCIEDAD ANÓNIMA

CONSTITUCIÓN

ACTO UNICO	FUNDADORES: firmantes del contrato constitutivo INSTRUMENTO PUBLICO
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SUSCRIPCION PÚBLICA	PROMOTORES: firmantes del programa
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- 1) programa de fundación (instrumento público o privado)
 - 2) aprobación autoridad de contralor: necesaria
 - 3) inscripción en el RPC dentro de los 15 días.
Caso contrario: CADUCA
- LA AUTORIZACIÓN ADMINISTRATIVA

CONSTITUCIÓN POR ACTO ÚNICO: Instrumento de constitución - requisitos

- 1) nombre, edad, estado civil, nacionalidad, profesión, domicilio y número de documento de identidad de los socios;
- 2) la razón social o la denominación, y el domicilio de la sociedad;
- 3) designación del objeto (preciso y determinado)
- 4) el capital social, expresado en moneda argentina, y mención del aporte de cada socio;
- 5) plazo de duración (determinado);
- 6) organización de la administración, de su fiscalización, y de las reuniones de socios;
- 7) reglas para distribuir las utilidades y soportar las pérdidas. Silencio: EN PROPORCIÓN A LOS APORTES (tanto unas como otras);
- 8) derechos y obligaciones de los socios entre sí y respecto de terceros;
- 9) cláusulas sobre funcionamiento, disolución y liquidación de la sociedad;
- 10) capital social: naturaleza, clases, modalidades de emisión, régimen de aumento y demás características de las acciones;

- 11) suscripción del capital, monto y forma de integración (plazo máximo para el saldo adeudado: 2 años);
- 12) elección de los directores (órgano de administración) y síndico (órgano de fiscalización) y término de duración en los cargos.

PASE ANTE AUTORIDAD DE CONTRALOR (I.G.J.) para verificación de requisitos.

JUEZ DE REGISTRO → dispone inscripción + estatuto y reglamento.

AUTORIZADOS PARA LA CONSTITUCIÓN (art. 167 L.S.)

- mandatarios especiales (para tramitar la constitución)
- representantes estatutarios

CAPITAL

Capital Suscrito (= capital social) → totalmente al tiempo de celebración del contrato constitutivo

Capital Integrado: * no menos del 25% del suscrito (efectivo)

- 100% del suscrito si se aportan obligaciones de dar
- cumplimiento: al momento de presentar trámite ante la IGJ

AUMENTO DEL CAPITAL

- Sociedades anónimas → aumento hasta el quíntuplo - publicar e inscribir
- Sociedades anónimas autorizadas a hacer oferta pública → aumento sin límite ni modificación de estatuto

ACCIONES - Art. 194 - Suscripción preferente

- 1) de igual valor
- 2) expresado en moneda nacional
- 3) pueden preverse diversas clases con derechos diferentes, pero dentro de cada clase tendrán los mismos derechos

4) las acciones pueden ser títulos cartulares o acciones escriturales (registro en cuentas de acciones escriturales)

Art. 217 - acciones preferidas

ASAMBLEA DE ACCIONISTAS - *ORGANO DE GOBIERNO*

1) lugar de reunión: en la sede o en el lugar que corresponda a la jurisdicción del domicilio social

2) resoluciones → obligatorias para los accionistas salvo el art. 245 (derecho de receso), deben ser cumplidas por el directorio

- asamblea ordinaria
- asamblea extraordinaria
- asamblea especial → derechos de una clase de acciones
- asamblea unánime
- asamblea en segunda convocatoria
- quorum de las asambleas
- orden del día
- cuarto intermedio

DERECHO DE RECESO DE LOS ACCIONISTAS

- derecho a separarse de la sociedad
- obtener el reembolso de sus acciones
- disconformidad con resoluciones - último párrafo art. 244

DIRECTORIO - *ÓRGANO DE ADMINISTRACIÓN Y REPRESENTACIÓN*

1) sociedades anónimas del art. 299: al menos tres directores

2) resto de las SS.AA.: directorio unipersonal o colegiado

3) directores: designados por la asamblea de accionistas o el consejo de vigilancia

- la cantidad de directores estará determinada por el estatuto
- el director es reelegible
- su designación es revocable sólo por parte de la asamblea (esta facultad no puede ser restringida ni revocada)
- la calida de accionista no es obligatoria
- la mayoría absoluta de los directores debe tener domicilio real en la República Argentina y establecer domicilio especial en la República Argentina para recibir notificaciones
- duración del mandato: fijado por estatuto, no mayor a tres ejercicio. Permanece hasta ser reemplazado.

CONSEJO DE VIGILANCIA - *ÓRGANO DE FISCALIZACIÓN*

- el estatuto podrá prever la organización y funcionamiento del consejo de vigilancia
- 3 a 15 accionistas
- designables por al asamblea / reelegibles y libremente revocables

Funciones:

- 1) fiscalizar la gestión del directorio → examen de contabilidad social, de los bienes sociales, realizar arqueos de caja, obtener informes sobre contratos celebrados o a celebrarse. El Directorio le presentará un informe escrito de la gestión social al menos trimestralmente.
- 2) convocar asamblea
- 3) elección de integrantes del directorio (si lo establece el estatuto), sin perjuicio de la revocabilidad por la asamblea
- 4) presentar a la asamblea sus observaciones sobre la memoria del Directorio y los EE.CC.
- 5) designar comisiones para investigar o examinar cuestiones o denuncias de accionistas o para vigilar la ejecución de sus decisiones
- 6) demás funciones y atribuciones de los síndicos

Cuando el estatuto organice el consejo de vigilancia, podrá prescindir de la sindicatura, la que será reemplazada por una auditoría anual contratada por el consejo de vigilancia. El informe de la auditoría sobre los EE.CC. será sometida a la asamblea.

SÍNDICOS - *ÓRGANO DE FISCALIZACIÓN PRIVADA*

La asamblea designará a uno o más síndicos titulares y suplentes.

OJO:

- si es S.A. del art. 299 (fiscalización estatal), la sindicatura debe ser sí o sí colegiada en número impar
- si no lo es, puede prescindir de la sindicatura, y el contralor estará a cargo de los socios individualmente
- en caso de aumento del capital, la asamblea también deberá designar síndico. No es necesaria la reforma del estatuto.

Requisitos:

- 1) ser abogado o contador público con título habilitante o ser sociedad civil con responsabilidad solidaria, constituida exclusivamente por estos profesionales;
- 2) tener domicilio real en el país

Impedimentos:

- 1) los inhabilitados para ser directores según el art. 264

- 2) directores, gerentes y empleados de la misma sociedad o de otra controlada o controlante
- 3) los cónyuges, los parientes por consanguinidad en línea recta, los colaterales hasta el cuarto grado inclusive y los afines dentro del segundo grado de los directores y gerentes generales.

PLAZO

- fijado por estatuto
- no mayor a tres ejercicios
- pueden ser reelegidos
- permanecen hasta su reemplazo
- sólo les revoca el cargo la asamblea de accionistas

COMISIÓN FISCALIZADORA: es la sindicatura colegiada

Constitución y funcionamiento: regulados por el estatuto

Llevará libro de actas

El cargo de síndico es personal, indelegable y remunerado

Atribuciones y deberes del síndico:

- 1) fiscalizar la administración de la sociedad mediante el examen de libros y documentación al menos una vez cada tres meses
- 2) verificar las disponibilidades y los títulos valores, las obligaciones y su cumplimiento; solicitar la confección de balances de comprobación
- 3) asistir con voz pero sin voto a las reuniones de directorio, del comité ejecutivo y de la asamblea, a las que debe ser citado
- 4) controlar la constitución y subsistencia de la garantía de los directores
- 5) presentar a la asamblea ordinaria un informe escrito y fundado sobre la situación económica y financiera de la sociedad, dictaminando sobre la memoria, el inventario, balance, estado de resultados
- 6) informar a los accionistas sobre materias de su competencia a los accionistas que representen más del 2% del capital
- 7) convocar a asamblea extraordinaria, cuando lo juzgue necesario, y a asamblea ordinaria o asambleas especiales cuando el Directorio omitiere hacerlo
- 8) hacer incluir en el orden del día de la asamblea los puntos que considere procedentes
- 9) fiscalizar la liquidación de la sociedad

FISCALIZACIÓN ESTATAL (art. 299)

Sociedades anónimas:

- 1) que hagan oferta pública de sus acciones o debentures
- 2) que tengan un capital social de 2.100.000
- 3) de economía mixta o con participación estatal mayoritaria

- 4) que realicen operaciones de capitalización, ahorro o requerimiento de dinero con promesa de prestaciones futuras
- 5) que exploten concesiones o servicios públicos
- 6) que sean controlantes o controladas de otra sujeta a fiscalización de acuerdo con los incisos anteriores

FISCALIZACIÓN ESTATAL LIMITADA

SS.AA. no incluidas en el art. 299 → la fiscalización estatal se limita al contrato constitutivo, reformas y variaciones del capital

RESPONSABILIDAD

De los accionistas → art. 254

De los directores → art. 274/275

De los síndicos → art. 296/297/305

CORPORATIONS

= a legal person composed of one or more natural persons and is an entirely separate and distinct entity from the individuals who compose it.

Highlights:

- the State in which it is incorporated grants the charter, which states the powers of the corporation
- its existence may be perpetual (death, withdrawal or disability of members does not dissolve it = **flexibility #**) (in some states: 25 / 99) **# permanency**
- it can sue and be sued
- it can purchase and hold lands or other property
- it can enter into contracts
- it can commit legal wrongs like a private individual
- members: lose (legally speaking) their identity in the corporation
- liability: the corporation is liable for the acts of its officers, but the individual stockholders are immune **# limited liability**
- name: must include "Corporation"/"Co.", or "Incorporated"/"Inc.", or "Limited"/"Ltd."
- interest: shares of stock represent fractional ownership interest in a corporation

ORGANIZING A CORPORATION

- Drafting of the ARTICLES OF INCORPORATION
 - 1) purpose
 - 2) duration
 - 3) corporation's location/registered office's location (domicile)
 - 4) total number of shares (par/no par)
 - 5) rights / voting powers / preferences / restrictions of each class of shares
 - 6) amount of paid-in capital
 - 7) the first director and their post office address
 - 8) name of post office address of the incorporators and the number of shares for which each has subscribed

Articles of Incorporation: delivered to Secretary of State / approval / payment of taxes, fees, and charges → issuance of a Certificate of Incorporation → corporate existence begins

- incorporators adopt by-laws in their first meeting
- directors hold their first meeting, elect officers, decide what assets are to be acquired, what stock should be issued, etc.
- powers of a corporation: the certificate/articles of incorporation usually include a very broad statement that indicates that the company can engage in any lawful business

BOARD OF DIRECTORS

- Board of Directors is the corporation's governing body → management of a corporation
- in most corporations, the Board of Directors must consist of at least 3 members
- directors are elected by the majority vote of the stockholders
- statutes or by-laws can stipulate that a director need not be a stockholder of the corporation
- the directors may, at the stockholders' request, consult the stockholders' wishes
- directors have a fiduciary relation to the corporation. Must discharge their duties in good faith (diligence/care/skill)
- directors must not derive personal benefit when acting on behalf of the corporation
- decisions which require shareholder approval: sale/lease/exchange/mortgage/pledge = disposition of substantially all the property of a corporation if not made in the regular course of business

merger/consolidation/voluntary dissolution

OFFICERS (AGENTS) OF THE CORPORATION

Board of Directors must elect:

- a president → needs be a director
- a secretary
- a treasurer
- one or more vicepresidents (if not a director, cannot succeed to the office of the president)

Board of Directors must appoint:

- such officers and directors as may be necessary for the corporation's management / same fiduciary relationship as B of D / removable if not acting in the corporation's best interest

- - - - -

- vice president/secretary/treasurer = any two may be combined in one person

RIGHTS OF THE STOCKHOLDERS

- right to information about the business affairs of the company: 1) visit and inspect the corporation's property, 2) inspect and examine books and records of the corporation
- stockholders' meetings: 1) at least one must be held within each calendar year (annual meeting)
- meetings can be **regular** or **special**. A **special** meeting may be called at any time by 1) the officers 2) B of D 3) individual director 4) an individual stockholder
- voting rights:
 - each shareholder is entitled to one vote for each share owned
 - election of directors = cumulative voting = number of votes he has x number of directors to be elected
 - casting of votes in person by proxy
PROXY: a person duly authorized by a written instrument (proxy) filed with the secretary of the corp.
- voting trusts: an agreement (written) whereby several stockholders, in order to control the business and affairs of a corporation, turn over their shares to one or more persons as trustees to vote the stock.
- liability of shareholders:
 - shareholders are not liable for the corporation's debts, acts or misdeeds of the officers or agents of the corporation → relation of stockholders and creditors = only the corporation's capital stock can be used for payment of debts.
 - in case of fraud, or the creation of a fictitious corporation, stockholders are liable not only with stock paid but also with their personal assets.
 - determining whether stock is fully paid in, or whether the declared stock value is actually that, the courts say that if directors acted in good faith, stock is deemed to be fully paid up.
 - "to pierce the corporate veil" → a method to disregard the corporate fiction

MERGER AND CONSOLIDATION

Consolidation:

- a new corporation comes into existence
- this new company takes over the assets and liabilities of two or more former corporations
- these former corporations are, therefore, dissolved

Merger:

- companies "A" and "B" become included in company "C", an existing corporation
- no new corporation is formed as a result
- the only surviving company is "C"

Mechanics of merger or consolidation

- 1) • joint agreement entered into by the B of D of each corporation, describing terms / conditions / methods
- 2) • agreement is considered by stockholders of each corporation involved. Two-thirds of the voting power of all stockholders of each corporation involved needed to adopt the agreement
 - if adopted, agreement is 2.1) certified by the secretary of each corporation 2.2) signed by the president and secretary of each corporation
- 3) • such agreement is delivered to the state secretary of state; if lawful, he files and records it in his office. Thus, merger or consolidation become a fact.

Dissenting shareholders:

- 1) within 20 days after authorization to merge or consolidate, they may a) reject the proposal in writing; b) demand payment for his shares.
- 2) disagreement as to the value of their shares: determination by three disinterested persons (appraisers): 1 appointed by stockholder, 1 appointed by the corporation, 1 appointed by the prior two. Their finding is **FINAL**.

Dissolution: can be **VOLUNTARY** (out of court) or **INVOLUNTARY** (supervised by a court)

When does it take place?

- Corporation's existence is terminated
- Corporation's affairs are wound up
- Corporation's assets are distributed among creditors and stockholders

When doesn't it take place?

- Corporation's suspension of business
- Corporation's abandonment of corporate franchise
- Sale of the corporate assets or appointment of a receiver

VOLUNTARY DISSOLUTION - Requirements

- 1) **resolution** adopted by at least 2/3 of the **shareholders'** voting power at a special meeting / written consent of all the stockholders
- 2) Corporation's winding up out of court is usually made by a trustee or trustees
 - 2.1) duplicate copies of the resolution must be signed by the majority of the directors or the stockholders holding the majority of the voting power
 - 2.2) *appointment of trustees can **now** take place*
- 3) incorporators may decide to wind up voluntarily provided that:
 - 3.1) the corporation has not commenced business;
 - 3.2) no debts of the corporation remain unpaid;
 - 3.3) the majority of incorporators desire that the corporation be dissolved

INVOLUNTARY DISSOLUTION

expiration of corporate charter

BY

equity suit by stockholder or creditor asking the court to appoint a receiver and terminate the corporation's affairs due to:

1) fraud on the part of the majority stockholders

2) mismanagement on the part of officers or directors

3) dissention among stockholders rendering impossible continuation of business

forfeiture of the charter by the state as a result of fraud practiced to pay franchise taxes or failure to exercise corporate powers

PARTNERSHIPS

What is a partnership?

It is a contract of two or more competent persons to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, and to divide the profit and bear the loss in certain proportions.

It **IS NOT** an entity separate and distinct from the individual members.

Highlights:

- association of two or more persons
- goal: to carry on business
- goal: mutual profit
- investment of capital: the same or different, therefore sharing in the profits & losses in the same or different proportions

Highlights (II):

Partners:

- 1) co-owners of the enterprise
- 2) agents for each other / have a fiduciary relationship with each other
- 3) each one is responsible for the acts of the other partners
- 4) each one retain their identity as individuals

ADVANTAGE OF PARTNERSHIPS

Freedom from public supervision.

DISADVANTAGES OF PARTNERSHIPS

Unlimited personal liability of each partner for the obligations of the business, including liabilities which result from wrongful acts of another partner.

General (very popular)

PARTNERSHIPS

(special) Limited

by estoppel (*)

General partnership: (pure form) all the partners share the liabilities of the partnership debts and in which each partner is an agent for the firm.

Limited partnership:

- composed of one or more **general partners** and one or more **special partners** - special partner may limit his liabilities in the partnership to the amount of his investment by inserting modifying articles in the partnership agreement
- filing of a limited partnership certificate stating information about each partner, the amount of cash or other property contributed by each limited partner, and the share of profits each limited partner is to receive
- publishing of the limited partnership certificate once a week for six successive weeks in two newspapers of the county in which the original certificate is filed
- limited partners:
 - shall not become liable as a general partner unless he takes part in the control of business
 - limited partners shall have the right to full information about all acts affecting the partnership
 - limited partners shall receive their share of the profits or other compensation by way of income

Agreement:

- explicit
- implicit → the partner's conduct → (*) partnership by estoppel

Different types of partners:

- DORMANT = that who is merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm as principals
- SILENT or SECRET or SLEEPING = not an active partner / not known to the public as such
- NOMINAL or OSTENSIBLE = allows his name to appear as a member of the firm, but he has no real interest

FORMATION OF A PARTNERSHIP

CONTRACT → with no special formality - oral or written (safer) clauses with no fixed contents

Partnership agreement = Articles of Copartnership (all right and duties agreed to by the prospective partners)
The same legal requirements as for any other agreement (consideration, capacity, consent)
Purpose: to conduct business for hte mutual profit of the partners - THE PURPOSE OF MAKING MONEY IS ESSENTIAL

Business arrangements that do not amount to a partnership - mere community of interest:

- local merchants forming an association to share losses related to their industry;
• persons who agree to share the expense of paying rewards for the capture of thieves;
• businessmen who band together for mutual protection or advancement
• A lends or advances money to B, provided B repays the loan from profits of the business, these profits taking the place of interest on the loan
• a store is leased under the arrangement that a percentage of the profit of the business of the store to be paid as rent (landlord is not a partner in the business)

Business arrangements that do amount to a partnership:

- co-owners of real estate who agree to combine their efforts in the business of buying, improving, selling or leasing it → they ARE held partners

PARTNERSHIP NAME

- one which states all the names of the persons forming the partnership
• an assumed name → filing in a public office a certificate stating full real names & residence required
• one stating the name of one partner and the phrase "and company" (BEWARE: prohibited in some States when "and company" does not representa an actual partner)

- one stating the names of all the partners involved + the filing of a certificate (with the county clerk's office) stating the names & addresses of the partners (**2** requirements - only in some states)

Restrictions on individual transactions of partners

MAIN

PRINCIPLE → the partners owe to each other the utmost good faith in all their mutual dealings

- 1) a partner may not derive a secret personal profit from any transaction of the firm or use partnership property for his individual profit or benefit
- 2) if he actually has an interest in the business being transacted with another firm, he must disclose such an interest
- 3) a partner cannot engage in the same kind of business as that of the partnership **WITHOUT THE CONSENT OF HIS PARTNERS**
- 4) any partner can naturally engage in business different from those the partnership deals with. In this case, he need not tell his partners
- 5) upon any partner's withdrawal from the partnership, notice thereof should be given to persons dealing with the partnership so that it doesn't become liable for debts contracted after his termination
- 6) unless consented by the other partners, a partner cannot sell his interest in the firm thus giving the transferee the right to become a member of the firm

LIABILITY OF PARTNERS TO OTHER PERSONS

Each partner may usually be held liable for the total amount of the **partnership's** (partners') debt

Partnership assets depleted:
INDIVIDUAL PARTNERS' ESTATE

both contractual and wrongs

or the **acts** performed by partnership's agents or employees on behalf thereof in the course of their relationship/employment

DISSOLUTION OF A PARTNERSHIP

= cancellation or breaking up of the relationship of the partners

1. partnership may be dissolved (*), but it is continued until settlement of the partnership's affairs (**)

(*) partners' authority ceases

(**) partners' authority does not cease

2. no partnership is indissoluble

3. WHO = any partner may, at any time, take legal steps to dissolve the partnership

4. WHY = Uniform Partnership Act

- mutual consent
- termination of partnership
- war between countries of which partners are respectively citizens
- abandonment of business enterprise
- partner's sale of his interest
- conclusion of term or particular undertaking
- express will of any partner, without specific reason
- unlawful business being carried on
- death of a partner
- bankruptcy of any partner or partnership
- by decree of court

WHY = court decree

- partner declared lunatic or of unsound mind
- partner incapable of carrying out his part in the partnership contract
- partner prejudicial behaviour towards his partners
- partner's breaching agreement or conducting in such a way that it is not practical to carry on the business with him
- partnership's business carried at a loss
- other circumstances rendering dissolution equitable

DEATH OF A PARTNER

DEATH OF A PARTNER DISSOLVES PARTNERSHIP	UNLESS OTHERWISE PROVIDED IN THE AGREEMENT
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Partners adjust & terminate the partnership's affairs (trustees for liquidation)

but no remuneration is to be awarded to him

distribution of assets in kind (although it could be in case one of the partners insist)

Partners go on operating the partnership and either pay interest on the decedent's partner investment or they return it

provision in will

Public corporations. Term is also commonly used to distinguish a corporation whose stock is owned and traded by the public from a corporation with closely held shares (i.e. close or private corporation).

Partnership by estoppel. Two or more persons who hold themselves out as partners to a third person, when in fact they are not partners, are barred from claiming they are not partners.

Estoppel. Estoppel is a bar or impediment which precludes allegation or denial of a certain fact or state of facts, in consequence of previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law.

Fundador: incorporator

Promotor: organizer

Promoter. One who promotes, urges on, encourages, incites, advances, etc. One promoting a plan by which it is hoped to insure the success of a business, entertainment, etc. venture. The persons who, for themselves or others take the preliminary steps to the founding or organization of a corporation or other venture. Those persons who first associate themselves together for the purpose of organizing the company, issuing its prospectus, procuring subscriptions to the stock, securing a charter, etc.

Corporate franchise. The right to exist and do business as a corporation. The right or privilege granted by the state or government to the persons forming an aggregate corporation, and their successors, to exist and do business as a corporation and to exercise the rights and powers incidental to that form of organization or necessarily implied in the grant.

Corporate charter. Document issued by state agency or authority (commonly Secretary of State) granting corporation legal existence and right to function (i.e. conduct business) as a corporation; or, may mean document filed with Secretary of State on incorporation of a business; e.g. articles of incorporation.

	U.K.	U.S.A.
instrumento constitutivo	memorandum of association	certificate of incorporation
estatuto	articles of association	by-laws

Obligación de dar: duty to turn over (property, by transfer or return of ownership, use, tenancy, etc.)

Responsabilidad ilimitada: unlimited liability

Responsabilidad solidaria: joint and several liability

Responsabilidad simplemente mancomunada: joint obligation

Executed: signed + sealed + delivered

Oponible: AS AGAINST / VIS-A-VIS

	U.K.	U.S.A.
asamblea ordinaria	scheduled/annual general meeting	regular meeting
asamblea extraordinaria	extraordinary general meeting	special meeting

Título cartular: CERTIFICATE

Derecho de receso: SHAREHOLDERS' RIGHT OF APPRAISAL. **Appraisal.** A valuation or an estimation of value of property by disinterested persons of suitable qualifications. The process of ascertaining a value of an asset or liability that involves expert opinion rather than explicit market transactions. In **corporate law**, a limited statutory right granted to minority shareholders who object to certain fundamental transactions such as mergers. In an appraisal proceeding a court determines the appraised value of their shares and the corporation pays such appraised value to the shareholder in cash. The Revised Model Business Corporation Act uses the term "dissenters' rights to obtain payment for their shares" to describe this right. An appraisal right exists only to the extent specifically provided by statute.

Unipersonal o colegiado: SINGULAR OR PLURAL

Revocar: to revoke, annul, void, cancel, to repeal, to abrogate, to reverse, TO SET ASIDE.

Revocation/ademption of gifts: REVOCACIÓN DE UNA DONACIÓN

Revocation of will / probate: revocación de testamento

Reversal of a judgment, sentence, conviction: revocación de un fallo, sentencia, condena

Revocación de un poder: WITHDRAWAL OF A POWER

Syndic. Person appointed for a particular matter.

SÍNDICO: statutory auditor

COMISIÓN FISCALIZADORA: statutory audit committee

CONSEJO DE VIGILANCIA: surveillance committee

Quiebras - síndico: trustee (AmE) / receiver (BrE)

Consanguinidad: BLOOD RELATION

Afinidad: AFFINITY

Indelegable: UNDELEGABLE

Garantía (dada por los directores): SECURITY INTEREST

Guaranty. A collateral agreement for performance of another's undertaking. An agreement in which the guarantor agrees to satisfy the debt of another (the debtor), only if and when the debtor fails to repay (secondarily liable). An undertaking or promise that is collateral to primary or principal obligation and that binds guarantor to performance in event of nonperformance by the principal obligor.

Voto acumulativo. Por excepción, el que se reconoce para que cada elector, en vez de votar a dos o más candidatos, pueda hacerlo dos o más veces por uno solo. Se trata de posibilitar la representación de las minorías.

CONFERENCIA DEL DR. GUILLERMO CABANELLAS DE LAS CUEVAS

Puntos salientes:

- En el mundo anglosajón, no existe una materia o área del conocimiento jurídico que trate sobre “sociedades” o “derecho societario” como poseemos en el mundo románico y, más precisamente, dentro del derecho argentino.
- “Business association”: es una expresión forzada pero tal vez sea un buen equivalente.
- “Business organization”: hay que tener cuidado, porque en el derecho anglosajón, hay empresas unipersonales (“sole proprietorships”) que para el derecho argentino no son sociedades por ser unipersonales.
- El concepto de sociedad es difícil de definir porque hay distintos tipos societarios que son especies dentro de un mismo género. En el mundo anglosajón, no hay una división como la que poseemos nosotros: sociedad anónima, sociedad de responsabilidad limitada, etc., y también falta una definición *general* de lo que es una sociedad (a diferencia del derecho argentino, que posee una definición general de “sociedad comercial” en el art. 1 de la ley 19.550).
- El mandato es una figura que, en el mundo del derecho anglosajón, poco o nada tiene que ver con el área de sociedades.
- Históricamente, en el mundo anglosajón surgieron, en primer lugar, las “partnerships” y, luego, las “corporations”. Estas dos figuras sirven para organizar empresas, y son, entre ellas, radicalmente diferentes.
- Tipos especiales de sociedad: Corporation: se parece a nuestra sociedad anónima. Dentro del género de las corporaciones, tenemos una especie que son las “business corporations”, y éstas son las que se parecen a nuestras sociedades anónimas. Pero también encontraremos que son “corporations” algunos condados, ciudades, barrios o distritos escolares de los Estados Unidos. Son las llamadas “public corporations” o “political corporations” y han sido creadas y se les ha conferido el carácter de “corporations” a efectos políticos y para que se encuentren facultadas para actuar en la administración del gobierno civil. Son entidades de derecho público.
- Las figuras básicas del derecho anglosajón, en lo que a organizaciones para el ejercicio y explotación del comercio, son la “partnership” y la “corporation”. ¿Cómo traducimos estos dos términos? Ésta es una cuestión difícil de resolver. En general, se la traduce como “sociedad de personas”, y dentro de las “sociedades de personas”, como una “sociedad colectiva”. Pero es sólo una aproximación.
- Otros subtipos: **Limited Partnership**: semejante a la “sociedad en comandita”, pero hay algunas diferencias. **Limited Liability Company**: existe en algunos estados de los Estados Unidos; es semejante a nuestra S.R.L. **Massachusetts Trust**: es un tipo societario de difícil traducción, si bien el Dr. Cabanellas arriesgó la de “Fideicomiso de Massachusetts”; el fiduciario es equivalente a nuestro órgano de administración (director/gerente). **Joint venture**: es una figura semisocietaria. Su historia se remonta al siglo XIX, debido a que las “corporations” no podía formar parte de las “partnerships”. En la joint venture, las normas son muy parecidas a las de las “partnerships”; se trata de dos empresas que colaboran entre sí, con una estructura que puede ser formal (como la de una corporation). La traducción “empresa conjunta” es deficiente porque no dice nada. En la joint venture, cada empresa que la forma conserva su individualidad; lo que

existe es un acuerdo de colaboración entre ellas para cumplir una finalidad específica. Una vez cumplida esta finalidad, la Joint Venture se desarma.

- Respecto de la actividad bursátil de las empresas: podemos clasificarlas, según nuestro derecho, en sociedades cerradas (no cotizan) y abiertas (cotizan). La traducción de "sociedades abiertas" es "public corporations", y, a veces "public trade corporations".
- Board of Directors: es el Directorio. La Asamblea de Accionistas es el "shareholders' meeting".
- **White knight:** "caballero blanco" en Estados Unidos.
- **Golden parachute:**
- **Poison pill:**