

LESSON 11: AMENDMENTS TO THE ARTICLES OF ASSOCIATION OF A COMPANY

SUMMARY:

- 1.-Amendments to the articles of association of a company: concept and legal requirements
- 2.-Amendments with special regulations
- 3.-Vocabulary

1- Amendments to the articles of association of a company: concept and legal requirements

The articles of association of a company can be amended at any time after the formation of a company according to a formal procedure which tries to protect as much as possible the company's interests, its partners and debtors (Arts. 285 to 290 LSC). The most important feature of this procedure is that any amendments to the articles of association should be resolved only by the general meeting, taking into account the majorities and quorums laid down by the law or the articles of association. The general meeting resolution resolving the amendment of the articles of association must be adopted by complying the following requirements:

- 1.-Administrators or partners must draw up a written proposal to amend the articles of association of the company. In case of a private LLC, the proposal will include a report to justify the amendment and its content.
- 2.-The general meeting should be convened clearly stating in the notice the articles which are going to be amended.
- 3.-The notice should also state the right of all the partners to examine at the registered office the full text of the proposed amendment to the articles of association and the report which justifies it. Partners will also be entitled to request delivery or remittance of the documentation free of charge.
- 4.-The resolution for the amendment should be adopted in compliance with the quorums and qualified majorities laid down by the law or the articles of association.
- 5.-The general meeting resolution will be executed as a public deed, and will be registered in the Trade Register and published in the BORME (Official Gazette of the Trade Register).

2.- Amendments with special regulations

1.-Any amendment to the articles of association of the company whereby its members *assume further obligations* will require the consent of the parties concerned, who should vote in favor (art. 291 LSC).

2.-Any amendment to the articles of association whereby *ancillary services are created, modified or extinguished* will also require the consent of the parties concerned. In this case, partners also have the right to withdraw (art. 89 LSC).

3.-Any amendment to the articles of association of the company which directly or indirectly *damages the rights of a certain class of shares* requires the votes in favor not only of a qualified majority of the shareholders present at the general meeting but also of a majority of the shareholders owning the shares of the class to which the amendment applies (art. 293 LSC). When the amendment affects the *personal rights of any partner of a private LLC*, the consent of all the members affected will be required (art. 292 LSC).

4.-The *restriction to the free transfer of registered shares*, validly adopted by the general meeting, will not be binding on the shareholders who opposed the adoption of the resolution for a period of three months after its publication in the BORME. In this three-month period, the shareholders temporarily not subject to the restriction of the free transfer of their shares may freely, without observing any restriction, dispose of them (art. 123.1 LSC).

6.-The corporate purpose represents one of the main reasons why the partners decide to set up a company. Therefore, its replacement or significant modification involves that the partners who have not voted in favor are entitled to withdraw from the company. Partners can exercise the right to withdraw within one month of the date on which the resolution of replacement is published in the BORME (art. 346 LSC).

7.-When the amendment consists of *changing the company's registered address*, different situations must be taken into account:

- Resolutions to change the company's registered address within the same municipal district can be adopted by the administrative body, unless otherwise provided in the articles of association of the company (art. 285.1 LSC).
- The relocation of the registered address to another municipal district or abroad will require a resolution to be adopted by the general meeting. In this respect, the resolution to transfer the registered address abroad may only be adopted where Spain has signed an international Treaty which allows this, while the company maintains its legal status. Partners who do not vote in

favor of the resolution will have the right to withdraw (art. 346 LSC).

3.- Vocabulary

To amend the articles of association- Modificación estatutaria

Proposal- Propuesta

Report- Informe

To call the general meeting- Convocar la junta general

The notice- El anuncio de la convocatoria

To execute the general meeting resolution as a public deed- Incluir el acuerdo en una escritura pública

To be binding on someone- Vincular a alguien jurídicamente

To oppose something- Oponerse a algo

Advertising requirements- Requisitos de publicidad

To withdraw from the company- Separarse de la sociedad

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