LESSON 14: SPECIAL TRADING COMPANIES

SUMMARY:

1.-Special trading companies
- a) Single-member companies (*sociedades unipersonales*)
- b) New enterprise limited companies (*sociedad limitada nueva empresa*)
- c) Professional companies (*sociedades profesionales*)
- d) Employee-owned companies (*sociedades laborales*)

2.-Mutual companies
- a) Cooperatives
- b) Mutual insurance companies
- c) Mutual (or reciprocal) guarantee companies

3.-Groups of companies
4.- Vocabulary

1.-Special trading companies

a) Single-member companies (sociedades unipersonales)

A single-member company is a public or private limited liability company (SAU or SLU) formed by a single founder or shareholder (natural or legal person) who acquires or subscribes all the issued shares or equity participations, or a public or private limited liability company formed by several founders or partners whose shares or equity participations have been acquired after its formation by one of its members or shareholders. This type of company is regulated by the LSC which introduces special rules to take into account (arts. 12 to 17 LSC):

1.-The formation of this type of company, the acquisition of all the shares or equity participations by a single member or shareholder after the formation of the company, as well as the loss or change of the sole member of the company must be recorded in a public deed and filed for registration in the trade register. The registered entry must include the name of the sole member of the company. In the case of companies with a sole member, who does not declare this fact in the prescribed manner, the sole member will have an unlimited liability for all the company debts incurred in that period.

2.-The sole member exercises all the powers of the general meeting and its resolutions must be recorded in the minutes.

3.-Any contract between the sole member and the company must be formalized in writing and the sole member will be liable for damages to the company when he/she obtains a personal profit from the contract to the detriment of the company's general interest .

b) New enterprise limited companies (sociedad limitada nueva empresa)

A New Enterprise Limited Company (SLNE) is a type of private limited liability company created with the purpose of simplifying the formation and legal organization of small and medium-sized enterprises, as well as stimulating the use of new technologies in this context. With this aim, the regulations for this type of company introduced some special features (arts. 434 to 452 LSC):

- This type of company can only be formed by a maximum of five founders, and the founders can only be natural persons.

- In order to facilitate the formation of the company, the LCS allows the use of electronic means.

- The name of the company must be formed by the name and surname of one founder followed by an alphanumeric code which helps to identify the company.

- The company's purpose can be established extensively as a way of allowing the company to devote itself to different activities or change its commercial activity without having to amend its articles of association.

- The share capital cannot be less than 3,000 euros or more than 120,000 euros, and partners will only be allowed to contribute money.

- The partners' registry book is not required. The company members will be authenticated by showing the public deed of acquisition of their equity participations.

- The notice convening the general meeting is simplified. It is possible to use registered mail with acknowledgement of receipt or electronic means in order to inform all the company's members of the meeting. In the same sense, the board of directors cannot be used as a way of organizing the administrative body. This type of company can only have a single director or several directors with joint or several liabilities.

- Amendments to the company's articles of association are limited. Only the company's name, domicile and share capital can be amended.

- The conversion to an ordinary SL only requires a general meeting resolution and an adaptation of its articles of association.

- The company's accounting only requires a daily ledger and a single register.

c) Professional companies (sociedades profesionales)

Professional companies can be defined as companies whose main purpose is to exercise, under the name of a legal person, a professional activity which requires a university degree and a registration in a professional body or chamber.

These types of companies can adopt any of the legal forms provided by Commercial Law. They are regulated by Law 2/2007 on Professional Companies (Ley 2/2007 de sociedades profesionales) and supplementarily by the law governing the legal form which has been adopted:

The main features of a professional company are as follows:

1.-Professional members of the company must own three-quarters of the share capital and voting rights.

2.-The name of the company can be formed using objective or subjective terms. If subjective terms are used, the name of the company must include the name of all members of the company or some of them with the ending “sociedad profesional”.

3.-The registration of this type of company has constitutive effects.

4.-Special rules regarding the liability for professional misconduct need to be taken into account. The company and the professional who has acted (whether or not he/she is a member of the company) are jointly liable for professional misconduct.

5.-The status of member of the company cannot be transferred, unless all professional members consent to the transfer. All professional members of the company have the right to withdraw.

6.-The exclusion of a professional member of the company in case of breach of his/her obligations or in case of disqualification for the exercise of his/her professional activity requires a general meeting resolution adopted by the majority of share capital and the majority of the voting rights of the professional members of the company.

d) Employee-owned companies (sociedades laborales)

The main purpose of employee-owned companies is to promote worker participation in the enterprise as a way of creating new jobs. They are regulated

in Law 4/97 of 24 March on Employee-Owned Companies (Ley 4/97, de 24 de marzo, de sociedades laborales), which introduces some amendments to the general regulations for public or private limited liability companies and certain tax benefits. The main features of an employee-owned company are as follows:

- More than 50% of share capital must be owned by workers with a permanent employment contract.

- The number of working hours corresponding to workers with a permanent employment contract who are not members of the company cannot exceed 15% of working hours per year corresponding to workers who are members of the company.

- All the members of the company cannot own shares or equity participations which represent more than 1/3 of share capital.

- It is possible to distinguish two types of shares or equity participations: a) *shares or equity participations owned by workers;* their transfer is subject to a preferential acquisition right in favor of the rest of the workers who are also members of the company; and b) *ordinary shares or equity participations* owned by members of the company who are not workers.

- Together with the legal and voluntary reserves, employee-owned companies must also have a special reserve to offset the losses.

2.-Mutual companies

Mutual companies are companies which do not pursue an economic benefit to distribute to their members, but to perform an economic activity which satisfies all their members' common needs. The basic features of this type of company are: their mutual character (this provides reciprocal support), the possibility of entering and exiting the company freely (open door principle), its variable share capital and the possibility of being self-organized.

a)Cooperatives

Cooperatives are regulated in Law 27/1999, of 16 July, on Cooperatives (Ley 27/1999, de 16 de Julio, General de Cooperativas) , and their main features are as follows:

a) they perform a commercial activity in order to satisfy the members' common social and economic needs.

b) The share capital and number of members may vary because they are submitted to the principles of free access and voluntary discharge.

c) They can perform any lawful economic activity.

d) Their structure and functioning are democratic.

e) They are self-organized and their members take part in the eeneral meeting and the board of directors.

f) If there are profits, the cooperative distributes the cooperative's income among its members, but without using capitalist criteria. The cooperative's income is distributed taking into account the participation of each member in the cooperative's business.

It is possible to distinguish different types of cooperatives according to different criteria.

- First-degree cooperatives which group natural persons; and second-degree cooperatives which group several cooperatives as a way of developing, coordinating and promoting the common activities of all their members.

- According to the cooperative's business, it is possible to distinguish associated work cooperatives, consumers' and users' cooperatives, housing cooperatives, shipping cooperatives, transportation cooperatives, teaching cooperatives, etc.

In order to form a cooperative, it is necessary to grant a public deed of incorporation and register the company in the Register of Cooperatives.

b) Mutual insurance company

Mutual insurance companies are regulated in Law 30/95, of 8 November, on Private Insurance Regulation and Supervision (Ley 30/1992, de 8 de noviembre, de Ordenación y Supervisión de los Seguros Privados) , and it is possible to distinguish two types:

1.-*Mutual insurance companies in the strict sense.* They are non-profit private insurance entities which cover their members (legal or natural persons) against the insured risks. In exchange, the company's members have to pay a premium at the beginning of the risk period. The main features of this type of company are as follows:

A minimum of five members are required in order to set up the company.

The company has a mutual nature and its members are also the insured clients.

The mutual company as a legal person is the insurer.

The company is democratically organized, and grants equal rights and obligations to all its members. Each member has one voting right.

The company can only be devoted to insurance activities.

There are some differences between cooperatives and mutual insurance companies:

In a mutual insurance company there is an inseparable link between being a member of the company and being an insured client of it, whereas in a cooperative such a strong relationship between members and users of the cooperative does not exist.

In a cooperative there are contributions to share capital, whereas in a mutual insurance company each member's contribution is the premium they have to pay at the beginning of the risk period.

2.- Mutual benefit societies. They are private insurance entities which perform their insurance activities voluntarily or as a supplement to the mandatory social security system.

c) Mutual (or reciprocal) guarantee companies

Reciprocal guarantee companies are non-profit financial entities with variable share capital, whose main objective is to gain access to credit for small and medium-sized enterprises and improve their financing conditions by extending guarantees before financial entities. Their members are enterprises and, at least four-fifths of them must be small and medium-sized enterprises. The main purpose of mutual guarantee companies is to grant personal guarantees to their members in the form of a pledge or any other way envisaged by law and provide them with expert advice by analyzing, evaluating and advising on the investment project that the small or medium-sized enterprise is to embark upon. Mutual guarantee companies are regulated in Law 1/1994 on the Legal Regime for Reciprocal Guarantee Companies (Ley 11994, de 15 marzo, del Régimen Jurídico de las Sociedades de Garantía Recíproca).

3.-Groups of companies

Spanish company law conceives the company as an independent legal person that makes its own decisions. Nevertheless, the current economic context shows that companies often take part in complex structures in which they make their main decisions. These kinds of complex structures are named groups of companies. A group of companies can be defined as a conglomerate of independent legal entities which, at the same time, are submitted to a common source of economic control. The main question about groups of companies is how to achieve that common economic control. To this purpose, different instruments can be used:

a) *Common economic control through a system of subordination*. In this case, different subsidiaries are under the economic control of one of them which is called the "parent company". This system involves a hierarchical relationship in which the subsidiaries depend on the parent company.

b) *Common economic control through a system of coordination*. In this case, the common economic control is achieved through a kind of coordination relationship among all the companies involved.

c) *Common economic control through the acquisition of shares*. In this case, the common economic control is achieved through the shareholding of one company in the share capital of another.

d) *Common economic control through contracts.* In this case, certain types of contracts such as trademark or patent license agreements are used as a way of creating and holding the group together.

e) *Lastly, the common economic control* can be achieved making the directors of the subsidiaries coincide with the directors of the parent company.

Together with the groups of companies, there are certain ways of cooperation between enterprises which the Spanish and European legislator wants to promote:

1.-Economic interest grouping. This is an independent legal body whose aim is to facilitate the economic activity of its members, improving or enhancing the results of this activity, in particular, for small and medium-sized enterprises. An economic interest grouping has full and autonomous legal competency and offers its members the fundamental advantage of presenting themselves as a single entity in negotiating contracts and requesting loans or financial guarantees for public tenders. The group is also an auxiliary body. It allows its members to improve their achievements by developing individual economic activities and it is also a non-profit organization itself.

2.- Temporary business association (UTE). This is a form of temporary business co-operation set up for a specified or unspecified period of time, for the purpose of carrying out a specific project or service. A temporary business association allows several companies to operate together in one common project. This form of association is usual in engineering and construction projects. UTEs are not corporations and have no legal entity. They are formed by notarial deed and are registered in the Special Register of UTEs with the Spanish Ministry of Economy.

4.- Vocabulary

Single-member company- *Sociedad unipersonal*

New enterprise limited company- *Sociedad limitada nueva empresa*

Professional companies- *Sociedades profesionales*

Employee-owned companies- *Sociedades laborales*

Mutual companies- Sociedades de base mutualista

Cooperatives- Cooperativas

Fist-degree cooepratives- Cooperativas de primer grado

Second-degree cooperatives- Cooperativas de Segundo grado

Mutual insurance companies- Mutuas de seguros

Mutual (or reciprocal) guarantee companies- Sociedades de garantía recíproca

Mutual benefit societies- Mutualidades de previsión social

Groups of companies- Grupos de sociedades

Daily ledger- Libro diario

Registration in a professional body or chamber- Colegiarse en un colegio professional oficial

Permanent employment contract- Contrato de tranbajo indefinido

Premium- Prima

Mandatory social security system- Sistema de seguridad social obligatorio

To extend / grant guarantees- Conceder garantías

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