LESSON 5: CORPORATE ENTERPRISES. GENERAL CHARACTERISTICS

SUMMARY:

1.- Introduction
2.- Concept and characteristics of public LLCs
3.- Concept and characteristics of private LLCs
4.- Concept and characteristics of partnerships limited by shares
5.- Vocabulary

1.- Introduction

Royal Legislative Decree 1/2010, of 2 July, which approves the text of the Corporate Enterprise Law (hereinafter, the LSC) unifies and harmonizes the previous regulations for corporate enterprises. As a consequence, the LSC regulates:

- Private LLCs
- Public LLCs
- Partnerships limited by shares

And it also repeals:

- Arts. 152 to 159 of the Spanish Code of Commerce, which regulated partnerships limited by shares.

- Royal Legislative Decree 1564/1989, of 22 December, which approved the consolidated text of the Corporations Law (LSA).

- Law 2/1995, of 23 March, on private limited liability companies (LSRL).

- Arts. 111 to 117 of Law 24/1988, of 28 July, on securities markets (*Ley 24/1988, de 28 de Julio, del Mercado de Valores*), which regulated listed companies.

Nevertheless, not all the regulations for corporate companies are included in the LSC. The conversion, merger and spin-off of companies are regulated in Law 3/2009 on Structural Changes in Trading Companies (*Ley 3/2009, de 3 de abril, sobre modificaciones esctructurales,* LME).

In the same way, the LSC has not only unified and harmonized the previous regulations for corporate enterprises; in certain aspects, the LSC has introduced a new regulation.

Finally, the LSC is considered to be a transitional regulation as many significant reforms of Spanish Company Law are still pending (more detailed regulations for listed companies, for groups of companies, etc.).

2.- Concept and characteristics of public LLCs

A public LLC is a corporate enterprise with a minimum share capital of €60,000 divided into shares and whose shareholders have a liability for the company's debts limited to their contributions to share capital (art. 1.3 LSC). Their main characteristics are:

- **Corporate enterprises,** which are set up without taking into account the shareholders' personal conditions. Shareholders are considered to be investors who contribute to the share capital of the company.

- The share capital is divided into **shares**, and the ownership of these shares grants shareholder status.

- A public LLC has its own assets formed by shareholders' contributions, by all the earnings resulting from its commercial activity and possibly by new contributions in the case of a share capital increase. Shareholders do not own the assets. The ownership is exclusive to the company.

- Therefore, the partners cannot be considered to be liable for company debts.

- Their registration in a Trade Register has a **constitutive effect.** This means that the company legally exists once it has been registered.

- Public LLCs are always **trading companies and are legally considered to be entrepreneurs** whether or not they perform a commercial activity.

This legal form is usually chosen by:

- Large enterprises which want to list on the stock market as a way of financing their commercial activities.

- Enterprises with many shareholders who want to participate in the company as investors who pursue to obtain the maximum benefit from the company. Shareholders, therefore, are important for the company because of the money that they invest rather than for their personal or professional condition.

Nevertheless, the possibility of including certain clauses in the articles of association of a public LLC can make this legal form suitable for medium-sized enterprises where each shareholder's personal and professional condition has an important role, together with the money they contribute. In this sense, the introduction of restrictions to the transfer of shares, the provision of ancillary services, etc. allows the creation of a public LLC with certain features related to private corporations.

3.-Concept and characteristics of private LLCs

A private LLC is a corporate enterprise, with a minimum share capital of €3,000 divided into equity participations and whose partners have a liability for the company's debts limited to their contributions to share capital. Private LLCs which have been registered are legally considered entrepreneurs regardless of whether they perform a commercial or civil activity (1.2 LSC). At present, private LLCs are the most used in trading operations.

The main common features between private and public LLCs are:

- Both are corporate enterprises regulated by the LSC.
- Partners and shareholders have a liability for the company's debts limited to their contributions to share capital.
- Both are trading companies and both are legally considered to be entrepreneurs regardless of whether they perform a commercial or civil activity.
- Both have the share capital established in the articles of association which is protected by mandatory rules.
- Both are governed by two bodies: the general meeting and the administrative body.

The main differences between private and public LLCs are:

- The minimum amount of share capital is €3,000.
- The share capital is divided into equity participations.
- Upon incorporation of the private LLC, the share capital must be fully paid up. As a consequence, there are no capital calls in this type of company.
- Private LLCs are private corporations where the transfer of equity participations is restricted.

- In private LLCs, partners are frequently able to impose their will over the provisions of the LCS. The regulations for private LLCs are more flexible compared with the mandatory and compulsory rules applicable to public LLCs.

- Private LLCs cannot be listed on stock markets.

According to this, the main characteristics of this type of company are as follows:

a) Legal form suitable for organizing different types of enterprises

Private LLCs are hybrid companies. The regulations for share capital and their corporate organization, in which each partner's legal status depends on the number of equity participations they own, make the corporate nature prevail in this type of company. Nevertheless, the regulations for private LLCs also tend to approximate them to partnerships in some aspects, especially regarding the restrictions on the transfer of equity participations. This hybrid nature makes the private LLC a suitable legal form for a large number of enterprises, except for those which want to list on stock markets.

b) Private corporation**:**

The partner plays an important role in private LLCs. This fact is shown in many rules governing this type of company.

- The transfer of equity participations is restricted. As a consequence, it is more difficult to enter a private LLC than a public LLC where the shares are freely transferable.

- Clauses in the articles of association which prohibit the transfer of equity participations are only allowed if all partners are granted with the right to withdraw.

- Private LLCs have restrictions to enter, but facilitate partners' exit.

c) Company with a flexible regulation

Partners can adapt their company to the needs of their business without being confined to the strict application of the mandatory rules. This makes private LLCs more suitable for medium and small-sized enterprises, which need more flexible action and performance mechanisms than those allowed by the rigid regulation of public LLCs.

4.-Concept and characteristics of partnerships limited by shares

A partnership limited by shares is a type company where there are two different kinds of shareholders. On one hand, there are general partners who have a

personal liability for the company's debts and, on the other, there are limited liability partners who have a limited liability for the company's debts (art. 1.4 LSC). The main differences between an ordinary limited partnership and a partnership limited by shares are as follows:

- The articles of association of a partnership limited by shares include the company's share capital, which is also divided into shares as in a public limited liability company.

- There must be at least one general partner.

- Each member of the company can be a general or limited liability partner, depending on who the company director is. When a member is appointed director of the company, he/she automatically assumes a personal liability for the company's debts as if he/she were a general partner. When he/she ceases to hold the office of director, he/she returns to his/her former responsibility. In this type of company, there is a direct relationship between the general partner and director. If one is appointed director of the company, he/she automatically becomes a general partner.

5.- Vocabulary

To repeal- Derogar

Shares- Acciones

Shareholders- Accionistas

Constitutive effect- Efecto constitutive

To list on the stock market- Cotizar en el Mercado de Valores

Equity participations- Participaciones sociales

Share capital- Capital social

Right to withdraw- Derecho de separación