LESSON 7: COMPANY ASSETS, SHARE CAPITAL AND RESERVES

SUMMARY:

1.-Share capital and company assets
2.-Reserves
3.-Contributions
4.- Vocabulary

1.- Share capital and company assets

a) Concept of shares and company assets

Share capital plays an important role in public and private LLCs. It is the amount of money established in the articles of association which represents the sum of the par value of each partner's shares or equity participations.

Share capital cannot be confused with company assets. The company assets are the money, properties and rights owned by the company which may vary depending on the results of the commercial activity carried out by the company, whereas the share capital is a fixed sum of money established in the articles of association and the first item on the liabilities side of the balance sheet. At the company's foundation, share capital and assets tend to coincide but, as the company performs its commercial activity, assets may increase or decrease depending on the profits or losses which arise from the business.

b) Functions of the share capital

Capital performs the following functions:

1.-It is a way of financing. Capital represents the amount of money which should be gathered by each partner's contribution in order to develop the commercial activity proposed in the articles of association.

2.- It acts as a guarantee for third parties. Share capital represents the minimum amount of money which the company has and, therefore, the minimum amount of money with which the company will pay its credits.

3.- It facilitates the company organization. In public and private LLCs, partners' or shareholders' rights and obligations are broken down in proportion to their contribution to the share capital of the company.

c) Principles

The main purpose of the Spanish legislator when regulating the concept of share capital is to ensure as much company capitalization as possible, thus avoiding a situation in which the company is trading with less assets than share capital. To achieve this aim, share capital is governed by the following principles:

- **Minimum capital principle.** The amount of capital cannot be less than €60,000 in public LLCs and €1 in private LLCs. This minimum amount of share capital must be observed not only at the company's formation but also throughout its life (arts. 3.2 and 4 LSC).

  Until the share capital of a PvtLLC reaches the amount of €3000, the following rules must be observed:

  - On the one hand, the private LLC must set at least 20% of the annual profit aside without limits until this reserve together with the share capital reach the amount of €3000.

  - In case of dissolution and liquidation of the company, partners will be jointly and severally liable for the difference between the amount of €3000 and the amount of subscribed share capital.

- **Determination principle.** The company's capital must be determined in the articles of association (arts. 23 d).

- **Integrity principle.** At the company's formation, the share capital must be fully subscribed in public LLCs and fully paid up in private LLCs (art. 21, 78 and 79 LSC).

- **Minimum payment principle.** A public limited liability company can be formed if the capital is fully subscribed and paid up with a value of at least 25% of the par value of each share (art. 79 LSC).

- **Effective correspondence principle.** The amount of share capital must involve an effective asset contribution.

- **Stability principle.** Public and private LLCs cannot perform their commercial activity with less assets than share capital. In these cases, the share must be increased following the procedure set out by Law and respecting the minimum amount of capital (€60,000 or €3,000).

2.- Reserves

Company reserves can be defined as part of company assets which have been accumulated to create a kind of non-distributable fund for special purposes. Reserves may arise from retained profits or from the issue of shares or equity participations at more than their par value.

There are different classes of reserves:

- Legal reserves. The LSC requires public and private LLCs to set 10% of the annual profit aside until the legal reserve reaches at least 20% of share capital.

- Special legal reserves. These are reserves provided by law, according to the special nature of the commercial activity performed by the company (finance and insurance activities),

- Reserves provided by the articles of association.

- Unrestricted voluntary reserves created by a general meeting resolution.

3.- Contributions

The main concern of the Spanish legislator when regulating the duty to contribute to the company is to guarantee the existence and integrity of share capital as much as possible and avoid situations in which the share capital does not correspond to a partner's effective contribution to the company.

Partners can invest money or property in the company but they are not allowed to contribute services to the company (art. 58 LSC). Depending on the nature of the contribution, it is possible to distinguish between:

A) "Cash" or monetary contributions. Partners must make their contributions in cash using the domestic currency (euro). In the case of foreign currency contributions, the articles of association must include the equivalent contribution in euros (art. 61 LSC). Monetary contributions must always be verified by a notary, by showing the deposit certificate issued by a financial institution (art. 62 LSC).

B) Non-monetary contributions. This kind of contribution can only be made when this is expressly allowed by the articles of association. In this case, the articles of association must describe the nature of the goods or rights contributed and their value (art. 63 LSC). The main concern of the Spanish legislator regarding this kind of contribution is the way in which it has to be measured. For this reason, the LSC establishes special requirements that must be met by this kind of contribution.

-*In public LLCs,* the LSC (arts. 67 to 71) sets out that non-monetary contributions can be made at the company's formation or in a capital increase with the issuance of new shares. In both cases, the measurement of the non-monetary contributions must be supervised by an independent expert named by the Trade Register which corresponds to the company address. The expert must draw up a report, including the description of the non-monetary contribution, its measurement and his opinion about the correspondence between that measurement and the par value of the acquired shares. The expert report must be attached to the public deed of incorporation or to the public deed of the capital increase.

The expert report will not be required when the non-monetary contribution consists of:

- Negotiable instruments listed on the stock market. Those instruments are measured according to their weighted average price in the stock market in the previous three months.

- Goods measured by an independent expert within six months before being contributed to the company.

If new circumstances change the value of these non-monetary contributions at the time in which they are contributed to the company, the directors must request the Trade Register to appoint an independent expert in order to measure those contributions again. If the directors do not meet this obligation, shareholders who represent at least 5% of share capital will be allowed to request the Trade Register to appoint an independent expert for the same purpose.

In addition to the need for an expert report, the founders are jointly and severally liable to the company, to the rest of the shareholders, and to third parties for the existence and right measurement of the non-monetary contributions.

-*In private LLCs*, the correct measurement of non-monetary contributions is subject to a strict liability regime (arts. 73 to 76 LSC). According to this regime:

- At the company's formation all the company's founders will be jointly and severally liable vis-à-vis the company and creditors for the measurement of the non-monetary contributions.

- In the case of a share capital increase, all the partners and the acquirers of new equity participations through non-monetary contributions will be liable vis-à-vis the company and creditors. The company directors will also be jointly and severally liable for the difference between the measurement of the non-monetary contribution recorded in the public deed of share capital increase and the real value of those contributions. Nevertheless, those partners who have opposed the measurement of the non-monetary contribution will not be held liable.

- Legal action can be taken by the company's directors, by partners who represent at least 5% of share capital and by creditors in the event of insolvency.

4.- Vocabulary

Company assets- Activo de la sociedad

Par value- Valor nominal (face value)

First item on the liabilities side of the balance sheet- Primera partida del pasivo del balance

To break down in proportion to- Repartir en proporción a

Reserves- Reservas

Legal reserves- Reservas legales

Special legal reserves- Reservas legales especiales

Reserves provided by the articles of association- Reservas estatutarias

Unrestricted voluntary reserves- Reservas de libre disposición

Contributions- Aportaciones sociales

To contribute to the company- Aportar a la sociedad

Monetary contributions- Aportaciones dinerarias

Non-monetary contributions- Aportaciones no dinerarias

To measure non-monetary contributions- Valorar las aportaciones

Measurement of non- monetary contributions- Valoración de las aportaciones