

Company Law

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Outline

1st. Lecture

1. The notion of company in section 184 of the Civil Code
- 1.1. The requisites of a company
 - 1.1.1. Plurality of members: the special case of the one man company (section 184/4; sections 390 fls. Commercial Code);
 - 1.1.2. Contributions;
 - 1.1.2.1. Contributions either in money or in kind;
 - 1.1.2.2. Contributions in services (industry partners)
 - 1.1.3. Exercise in conjunction of an economic activity;
 - 1.1.4. Aiming at producing profits or allowing an economy.
- 1.2. Civil Companies and commercial companies (section 184/2 Civil Code):
Criteria (section 184/3 Civil Code; section 174 Commercial Code).
 - 1.2.1. The option for a type of commercial company (section 174/1 Commercial Code): general partnership; limited partnership; private company; public company;
 - 1.2.2. The exercise of a commercial enterprise (section 174/2);
 - 1.2.3. Commercial companies as compulsory for the exercise of an enterprise.

2nd lecture

2. Types of commercial companies: criteria
 - 2.1. Responsibility of members for the company's debts;
 - 2.1.1. Members that are liable for the company's debts: general partners: the special case of the shareholder of a private company that assumes responsibility for the company's debts until certain limit (section 357 Commercial Code);
 - 2.1.2. Shareholders are not liable for the company's debts;
 - 2.2. Organizational structure: administration; general meeting; supervisory board; secretary;
 - 2.2.1. Administration and general meeting as necessary organs of every type of company;
 - 2.2.2. Supervisory board and secretary as organs compulsory in the public company and those companies in which are verified the criteria set forth in section 214/2 Commercial Code;
 - 2.3. Transfer of share or parts;
 - 2.4. Minimum of members: the one man company case;
 - 2.5. Minimum capital: compulsory for private companies and public companies;
 - 2.6. Reasons for the *numerus clausus* of commercial companies.

3rd lecture

3. The constitution of the company
 - 3.1. The legal regimen of the company before registration;
 - 3.1.1. Legal relations with third parties before registration (sections 188, 190 Commercial Code);
 - 3.1.2. Legal relations between members before registration (section 189);
 - 3.2. The company as a legal entity independent of their members;
 - 3.3. Acquisition of legal personality;
 - 3.4. Capacity of the company;
 - 3.4.1. The capacity of the company is not limited by its object (section 177 Commercial Code);
 - 3.4.2. The capacity of the company is only limited by its aim (profits);
 - 3.4.3. Gratuitous acts are in principle contrary to the company's capacity: the law has some exceptions (section 174/2 Commercial Code);
 - 3.4.4. Guarantees for the benefit of third parties are also considered as contrary to the company's capacity unless the administration explains the special need of the guarantee;
 - 3.4.5. Legal acts in contravention of the company capacity are null and void;
 - 3.4.6. Legal acts in contravention of the company object are valid although the administrators will be liable in face of the company for breach of contract;
 - 3.4.7. The object of the company as well as another limitation to the powers of the administrators as resulting from the law are not opposable to third parties (section 236 Commercial Code);
 - 3.4.8. Limitations of the administrators powers as they result from the law are only valid internally;
 - 3.4.9. Administrators have the duty to follow the limitations set forth in their appointment and hence are liable for breach of contract;
 - 3.4.10. The company is obliged by the contract entered into by its administrators although they are not within the object of the company or the limited powers of the administrators;
 - 3.4.11. However third parties will not be protected if the company proves that the third party knew or ought to know that the contract was in contravention of the company's object or outside the powers of the administrators;
 - 3.4.12. The company can approve the contract although the resolution of the general meeting will still be voidable.

4th lecture

4. The position of the members in the company: rights and obligations
 - 4.1. General rights and special rights;
 - 4.1.1. General rights: to share in the profits; to participate in the general meeting; to obtain information about the company; to be elected to the organs of the company;
 - 4.1.2. Special rights: a right that can not be taken away without the member consent;
 - 4.2. Obligations:

- 4.2.1. Contribution in money or in kind;
- 4.2.1.1. Special concerns about the contributions in kind (section 202 Commercial Code);
- 4.2.1.2. Loyalty duty as duty to not behave in a manner contrary to the interest of the company: limits in the private and public companies;
- 4.2.1.3. Others obligations;
- 4.2.1.4. Resolutions of the members;
- 4.2.1.4.1. Resolutions in general meeting;
- 4.2.1.4.2. Resolutions outside a general meeting: the “universal” or “totalitarian” general meeting case;
- 4.2.1.4.3. Requisites of validity of the members resolutions;
- 4.2.1.4.4. Invalidity of the resolutions;
- 4.2.1.4.4.1. Resolutions null and void (section 228);
- 4.2.1.4.4.2. Resolutions voidable (section 229);
- 4.2.1.4.4.3. Legitimacy to argue the invalidity of the resolution;
- 4.2.1.4.4.4. Legal defenses against invalid resolutions.