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Amendments to the General Law of Business Associations.

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AMENDMENTS TO THE GENERAL LAW OF BUSINESS ASSOCIATIONS

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Legislation amending Mexico's General Corporate Law, published in Mexico's Official Gazette on June 11, 1992, became effective on June 12, 1992.¹ The following is a description of the amendments.

The amendments that relate to the formation of companies, powers of attorney, registration in the Public Registry of Commerce, and corporate reorganization apply to every type of legal entity: general part-

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1. See generally *Ley General de Sociedades Mercantiles* [LGSM][Law Amending the Mexican General Corporate Law] art. 5, D.O., June 11, 1992; see also *id.* Transitorio Primero (stating effective date of amendments).

nerships (*sociedades en nombre colectivo*), special partnerships (*sociedades en comandita simple*), limited liability companies (*sociedades de responsabilidad limitada*), stock companies (*sociedades anónimas*), special partnerships with shares (*sociedades en comandita por acciones*), and cooperatives (*sociedades cooperativas*).

I. FORMATION OF CORPORATIONS

Notaries shall not authorize the formalization of company charters or amendments thereto if all the requirements of the General Corporate Law are not met.²

II. POWERS OF ATTORNEY

A. *The Validity of a Power of Attorney*

The amended provisions clearly establish the validity of a power of attorney without having to comply with the requirements of recent appellate court decisions.³ The amended law provides that for the power of attorney to be valid, a Notary Public must formalize only the relevant portion of the meeting of the shareholders in which the power of attorney is granted.⁴ The persons who preside as secretary and president at the meeting shall duly sign both the minutes of the meeting and the public instrument containing the power.⁵ A special delegate may also be appointed to sign the public instrument.

B. *Requirements Which Must Be Satisfied by the Notary*

In the instrument in which the power of attorney is granted, the notary must certify the following information regarding the company in a recital, insertion, or annex to the supporting documents:⁶

- (1) the company or firm name;
- (2) the domicile;
- (3) the duration;
- (4) the amount of capital;
- (5) the company's purpose;

2. LGSM art. 5.

3. LGSM art. 5.

4. *Id.* art. 4.

5. *Id.* art. 10.

6. LGSM art. 10.

- (6) the authority under the company charter of the body conferring the power of attorney;
- (7) the designation of the board of directors, when applicable; and
- (8) the power conferred by an authorized person, accompanied by evidence of the authority of such person.

Powers of attorney that have already been granted or are pending before a Notary Public will be valid provided they meet these requirements. Thus, it is very important to review whether powers of attorney previously granted meet all of these requirements. Failure to satisfy any of the requirements could result in a challenge to the validity of the power.

III. REGISTRATION OF BUSINESS ASSOCIATIONS

It is no longer necessary to obtain a court order to register a company charter or amendments thereto in the Public Registry.⁷ This change applies to all charters issued prior to the amendments' effective date but which are still pending registration.

IV. CORPORATE REORGANIZATION

A. *Definition*

The reorganization of a company may occur through a split-up or a spin-off. A split-up occurs when the parent company is divided into two or more separate companies into which all the assets, liabilities, and corporate capital of the parent are distributed. A spin-off occurs when the parent company contributes only a part of its assets, liabilities, and corporate capital to one or more newly formed companies but the parent continues to exist.

B. *Procedure*

Implementing the reorganization plan requires a resolution by the shareholders, the board of directors, or other equivalent organ having the majority set out in the company's by-laws.⁸ Each shareholder has a right to an equity interest in the newly formed company in proportion to the shareholder's interest in the parent company.⁹ A Notary Public must formalize the minutes of the meeting and the minutes

7. See LGSM art. 153 (stating requirements for registering in Public Registry).

8. LGSM art. 228.

9. *Id.* art. 228, pt. 3.

must be registered in the Public Registry.¹⁰

C. *Opposition*

The plan for reorganization must be published, and creditors or any shareholder or shareholders who hold more than a 20% ownership interest may challenge the plan within the 45 days following the plan's publication.¹¹ A successful challenge may result in the termination of the reorganization.

Shareholders or interest holders who vote against the reorganization may exercise both their right to separate from the company and their accompanying right of redemption of their shares for a proportionate amount of the corporate assets.

V. STOCK COMPANIES

A. *Number of Shareholders and Minimum Corporate Capital*

The amendments reduce the minimum number of shareholders from five to two¹² but increase the minimum capital allowed from twenty-five thousand pesos to fifty million pesos.¹³

It is advisable to transfer shares to the principal shareholder in those companies in which additional shareholders were brought solely to meet the legal requirement of five. The new rule requiring a fifty-million-peso minimum of capital does not apply to stock companies formed prior to the effective date of the amendments.

B. *Administration of the Stock Company*

1. Resolutions by the Board of Directors and the Shareholders

The corporate by-laws may now provide that a resolution by the Board of Directors or shareholders adopted outside a formal meeting will be valid if all the board members or shareholders agree to it unanimously and they evince such agreement by a writing.¹⁴

2. Guaranty of the Board Members and Management

The amendments provide that the corporate by-laws may make op-

10. *Id.* art. 228, pt. 5.

11. LGSM art. 228, pt. 6.

12. LGSM art. 228.

13. *Id.* art. 228, pt. 2.

14. LGSM art. 143.

tional the posting of a bond in guaranty for liabilities of the board and management.¹⁵ Accordingly, the registration of the company will be denied for failure to post a bond only in those cases in which the corporate by-laws affirmatively impose this requirement.¹⁶

VI. THE LIMITED LIABILITY COMPANY

The amendments increase the maximum number of interest holders in a limited-liability company from twenty-five to fifty.¹⁷ The amendments also increase the minimum capital required for such companies from five thousand pesos to three million pesos. The ownership interests must now be divided into one thousand pesos or multiples thereof.¹⁸ Limited-liability companies formed prior to the amendments are not subject to the new rules.

The amendments also provide that interest holders representing a majority of the total capital may approve the assignment of an interest.¹⁹ The by-laws, however, may require that a larger number of interest holders approve the assignment.²⁰ Prior law required unanimous approval of assignments unless the by-laws stipulated approval by three quarters of the interest holders.

The Temporary Articles to the amending legislation allow a twelve-month grace period, which began June 12, 1992, for a limited-liability company to amend its by-laws to comply with the aforementioned requirements.²¹

The interest holders now have one vote for every one thousand pesos, or multiple thereof, of capital contribution rather than the one-hundred-peso multiple under the previous corporate law.²² However, the amendments allow deviation from this rule when the company has issued preferential interests.²³

15. LGSM art. 152-53.

16. *See id.* art. 153 (noting optional nature of bond requirement).

17. LGSM art. 61.

18. *Id.* art. 62.

19. *Id.* art. 65.

20. *Id.* art. 65.

21. LGSM Transitorio Segundo.

22. *Id.* art. 79.

23. *Id.*