

## **NEW COMMERCIAL SOCIETIES LAW IN DOMINICAN REPUBLIC: 479-08**

Santiago Mejia Ortiz  
Mejia-Armenteros & Abreu  
[s.mejia@maa-law.com](mailto:s.mejia@maa-law.com)

### **Executive Summary**

The new Commercial Societies and Individual Enterprises of Limited Responsibilities General Law (Law No. 479-08), substitutes and derogates the Third Title in the Commercial Code that is in effect, that includes the articles 18 to the 64 regarding the Commercial Societies.

This new Law recognizes and maintains in effect the different types of societies known from the Commercial Code. Nevertheless, institutes two new classes of societies: the Societies of Limited Responsibilities (SLR<sup>1</sup>) and the Individual Enterprises of Limited Responsibilities (IELR<sup>2</sup>).

This way the law recognizes and regulates the following types of societies:

- Joint-Stock Societies of Public and Private Subscription
- Collective Name Societies
- Simple Silent Partnership Societies
- Stocks Partnership Societies
- Societies of Limited Responsibilities
- Individual Enterprises of Limited Responsibilities

Additionally, it recognizes the Accidental or in participation Societies. The Law establishes that this society lacks legal personality, and that it will not be subject to any type of requisite of form nor matriculation and that its existence will be proven by any means.

The law also regulates, the aspects related to the conformation and operation of the different management organs of all the societies regulated on the basis of the minimum norms of good corporative government; the constitution and deliberation of the deliberating organs and the control and supervision mechanisms of the social management.

Also, attenuates the regime of invalidities of the Commercial Societies, adapting it to the modern regulatory tendencies.

In addition, the law of societies regulates the process of fusion; division of societies; increases and reduction of capital; dissolution and liquidation, amongst other new features. This is very important, since our previous legislation, suffered from great voids in these aspects.

### **1. Joint-Stock Societies.**

The article 154 of the law defines the Joint-Stock Society as the one existing between two or more people under a social denomination and is composed exclusively of partners whose responsibilities for the losses are limited by their contributions. Its capital will be represented by essentially negotiable titles denominated Stocks, which will have to be completely subscribed and paid before the issuance.

In accordance with the Law, the Joint-Stock Societies could be:

---

<sup>1</sup> SRL by the initials in Spanish

<sup>2</sup> EIRL by the initials in Spanish

- of Public Subscription: the ones that resort to the public savings for the formation and increase of the authorized social capital, or quote their stocks in the stock market, or contract loans by the public emission of negotiable obligations, or use mass media or advertising to position and negotiate any type of instrument in the stock market; or
- Private Subscription: those Joint-Stock Societies not included in the enunciations of the article 156.

#### Particular Characteristics

- Number of shareholders: Minimum of two (2)
- Social Denomination: will be formed freely by a fantasy name, necessarily followed by the words “Joint-Stock Company” or its Abbreviation “S. A.”<sup>3</sup>
- Minimum Capital: of Thirty Million Dominican Pesos (RD\$30,000.00), of which a minimum of ten percent (10%) will have to be subscribed and paid. The minimum amount could be fit by the Industrial and Commercial State Secretariat each three (3) years in accordance with the consumer’s price index published by the Central Bank of the Dominican Republic.
- Increases in Capital. In the increases of capital the shareholders will have the right of proportional preferential subscription to the quantity of their stocks in the capital subscribed and paid. This right of preferential subscription could be renounce to or transferable.
- Accounts Commissioner. Each Joint-Stock Company will be supervised by one or several accounts commissioners designated by general assembly of shareholders; they will be physical people. They should have the quality of certified public accountant with at least three (3) years of experience in Company Audits, and could be or not be shareholders. The accounts commissioners will have a permanent mission, with exclusion of all management interference, verify the values and accounting documents of the society and control the conformity with the accounting rules in effect. Will also verify the sincerity and concordance with the annual accounts of the Administration Counsel Report and the documents delivered to the shareholders about the financial situation and said annual accounts.
- The accounts commissioners are subject to a strict regime of incapacitation provided in the articles 211 and 243 to the 245, both inclusive.
- Administration of the Society. The joint-stock company will be administrated by an administration counsel made of at least three (3) members. The physical persons that execute at the same time more than five (5) administrative mandates of any kind of commercial society cannot be administrators to a joint-stock company.
- The Administrative Counsel will chose amongst its members a president, who will be a physical person, under penalty of nullity of the designation.
- When a moral person is designated as administrator it will be obliged to name a permanent representative, who will be subject to the same conditions and obligations and will bear the same civil and penal responsibilities that would have if he was administrators in his own behalf, notwithstanding the share responsibility of the moral person he represents.
- The articles 28, 29, 227 and 228 of the Law establish a regime of fiduciary obligations of the social management.

---

<sup>3</sup> S. A. abbreviation of the Spanish Words “Sociedad Anonima” that can be translated to “Joint- Stock Company”.

- The shareholders Assemblies: in the Joint-Stock Companies of Private Subscription, the resolutions of the assemblies can be adopted in minutes subscribed by all shareholders without the need of an actual meeting. Also the vote can be manifested by means of any electronic or digital resource. Both circumstances will have to be expressly indicated in the minutes issued to the effect.

#### Of Public Subscription.

Article 515 of the law establishes that those joint-stock companies constituted before the promulgation of the same and that have made public biddings of assets, primary or secondary, or negotiated financial instruments through the Assets Stock-Market of the Dominican Republic, will have to make the adaptation of the accounting and operation of the company in accordance to the requisites established by said law.

#### Of Private Subscription.

Private Subscription is those Joint-Stock Societies not included in the enunciations of the provided in the article 157 of the law.

### **2. Collective Name Societies**

The Collective Name Society is that which exists under a trade name and in which all the partners have the quality of retailers and respond, in a subsidiary, limitless and shared way, for the social obligations.

#### Particular Characteristics

- Number of shareholders: Minimum of two (2)
- Trade name: has to be made of the name of one or more partners followed by the words “and Company” or its abbreviation, if in it did not mention the name of all the partners.
- Capital: will be established in the Social Statutes.
- Cession of social parts: unanimous approval of the partners is required
- Accounts commissioner: its designation it not obligatory
- Administration: all partners will be managers, unless otherwise stipulated in the statutes, that can designate one or several managers, partners or not, or stipulate the designation by latter act.

### **3. Simple Limited Company**

The Simple Limited Companies are those that exist under a trade name and are composed of one or several joint partners that respond in a subsidiary, limitless and shared manner for the social obligations, and one or several joint partners that only are obligated up to the payment of their contributions.

#### Particular Characteristics

- Number of partners: Minimum of two (2)

- Trade name: will be made of the names of one or more joint partners, followed by the words “and Company” or equivalents, if in it does not mention the name of all the joint partners. The words “Limited Partnership” or the abbreviation “S. in C.”<sup>4</sup>
- Capital: will be established in the Social Contract. The contributions of the joint partners will always be in nature or in cash.
- Cession of social parts: the social parts can only be yielded with the approval of all the partners, unless admitted stipulations in the social statutes.
- Accounts commissioner: its designation is not obligatory. The faculties of internal inspection and supervision of the society will be executed by the joint partners.
- Administration: the appointment of the manager will be by majority of all the partners, unless there is a clause to the contrary in the social statutes. The joint partners can't be managers, representatives or occasional leaders of the company.

#### **4. Limited Stocks Partnership Societies**

The Limited Stocks Partnership Societies are those composed by one or several joint partners that will have the quality of retailers/merchants and will respond indefinitely and jointly of the social debts, and the limited partners, that will have the quality of shareholders and will only bear the losses in proportion to their contributions. The social capital will be divided in shares. The number of the joint partners can't be inferior to three (3).

##### Particular Characteristics

- Number of silent Partners: minimum, three (3) - general partners: minimum, one (1).
- Trade Name: composed by the name of one or several partners followed by the words “and company” or its abbreviation if in it were not displayed the names of the general partners.
- Capital: will be divided in shares. Will be established in the social statutes.
- Accounts Commissioner: the designation of one or several accounts commissioners is obligatory. In addition, a supervision counsel will be named composed by at least three (3) limited partners in accordance with the statutes, for permanent control of the management of the society.

#### **5. Societies of Limited Responsibilities**

The societies of Limited Responsibilities are those formed by two or more persons by contributions of all partners, who don't respond personally of the social debts. It is our personal believe that this will be the most commonly used form of company.

##### Particular Characteristics

- Number of partners: minimum two (2) and maximum of fifty (50)

---

<sup>4</sup> S. in C = Initials for the abbreviations in Spanish

- Social denomination: a fantasy name can be used or a trade name that will have to be preceded or followed by the words “Society of Limited Responsibilities” or the initials “SRL<sup>5</sup>”. If this indication is omitted the partners will be jointly responsible in front of third parties.
- Capital: the social capital will be divided in social contributions/shares that can't be represented by negotiable titles. They shall be constituted with a minimum of One Hundred Thousand Dominican Pesos (RD\$100,000.00). The Secretariat of State of Industry and Commerce will adjust by regulations every three (3) years, the minimum and maximum amounts of social capital, as well as the minimum of contributions/shares, in accordance with the consumer price index published by the Central Bank of the Dominican Republic as reference index.
- Assignment and Transmission of Social: the cession of social shares among partners, between ascendants and descendants, and their transmission by succession or common wealth liquidation between husband and wife, will be free, unless statutory stipulations to the contrary. The cession of social shares to third parties outside the society will require the consent of the majority of the partners that represent by at least three quarters (3/4) parts of the social shares. If the cession is not approved, the partners will have to proportionally acquire them, in accordance with the procedures established by Law.
- Accounts Commissioner: its not obligatory, however, can be designated if at the closing of the last social exercise, the society, reports a total balance equal or superior to 5 times its social capital or an amount of profit equal or higher to 2/3 parts of the social capital, before the tax deductions. Also the partners that represent 1/10 of the social capital will always be able to demand in referral the designation of an account commissioner.
- Administration of the Society: the SRL will be managed by one or more managers that will have to be Physical persons, partners or not. In front of third parties, the manager(s) will be invested with the amplest powers to act, in all the circumstances, in the name of the society, subject to the powers that the law attributes specifically to the partners. The society will be compromised by the acts and doings of the manager or managers even if this are not related to the social object, unless that is proven that the third party had knowledge that the acts or doings were foreign to the social object or that he could not ignore it under the circumstances.
- Assemblies Partners: the decisions will be taken in assembly. Nevertheless, the statutes will be able to stipulate that all decisions or some of them be adopted by written consultation or by consent of all the partners contained in a minute with or without the necessity of an actual meeting.
- Also the vote of the partners will be able to be pronounced through any electronic or digital means. Unless in occasion of the approval of the report of annual management (Article 110), and in case the celebration of the assembly is required by one or several partners who are titular at least of half (1/2) of the social contributions/shares or that constitute the quarter (1/4) of the partners and simultaneously are proprietors of the quarter (1/4) of the social quotas/contributions (article 112).

## **6. Individual Enterprises of Limited Responsibilities**

The Individual Enterprises of Limited Responsibilities is owned by a physical person and is an entity that has its own legal personality, with capacity to be bearer of rights and obligations, which

---

<sup>5</sup> SRL initials in Spanish for Society of Limited Responsibilities.

form an independent patrimony and separated of those other wealth/property of the physical person titular of said enterprise.

#### Particular Characteristics

- Number of partners: one (1). Can only be constituted by physical persons.
- Social Denomination: the name of the enterprise will have to be preceded or followed by the words “Individual Enterprise of Limited Responsibilities” or the initials “EIRL<sup>6</sup>”. It should not have the name, last name or part of them, nickname or any other appellative of one physical person, which in no way will be used as distinguishing mark of the enterprise.
- Capital will be determined by statutes.
- Accounts Commissioner: does not exist
- Administration of the Enterprise: the owner will be able to designate a manager or assume the functions of one. From the start of the operations, the enterprise should open and maintain an accounting in accordance with the legal and regulatory dispositions applied to merchants.

For the commercial societies existing before the coming in effect of the new law, this demands that they are “adjusted” or “transformed”, depending on the interests of each society, to adjust to the new dispositions of the Law 479-08.

---

<sup>6</sup> EIRL initials in Spanish for Individual Enterprise of Limited Responsibilities.