MANAGEMENT OF JOINT STOCK COMPANIES: SPAIN AND TURKEY COMPARED THE SPECIFIC OBLIGATIONS Of PUBLICLY HELD COMPANY DIRECTORS

İSPANYA VE TÜRKİYE KARŞILAŞTIRMALI ANONİM ORTAKLIKLARIN YÖNETİMİ

Prof. Dr. Enrique Moreno SERRANO *

ABSTRACT

This paper analyzes the regulation of directors of capital companies in Spain compared with the management model of joint stock companies followed by the Turkish Commercial Code No. 6102. The Spanish model and its legal solutions may serve to further reform of the rules of the management of joint stock companies in Turkey. Specifically, the paper is focused on: (i) In the organisational arrangements, developing the composition and functioning of the Board of directors; (ii) The status of directors, in particular, the requirements to be a director, ways of appointments, dismissal, remuneration, and liability.

Keywords: *Joint stock companies, Management, Directors.*

* Universidad Rey Juan Carlos (Madrid, Spain), Professor of Commercial Law, (enrique.moreno@urjc.es).

I. LEGAL REGIME OF DIRECTORS OF JOINT STOCK COMPANIES.

The legal regime of directors of joint stock companies in Spain is in Royal Legislative Decree 1/2010, of 2 July, whereby approves the Consolidated Text of the Capital Companies Act (*Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*, hereinafter LSC), and Royal Decree 1784/1996, de 19 de julio, whereby approves Regulation of Mercantile Registry (*Real Decreto 1784/1996, de 19 de julio, por el que se aprueba el Reglamento del Registro Mercantil*, hereinafter RRM), which develops certain aspects that must be registered. In addition, LSC provides a certain freedom to the by-laws of each company to complete this legal regime.

LSC carries out a formal unification of the legal regime applicable to the capital companies: joint stock companies (*sociedades anónimas*, SA), limited liability companies (*sociedades de responsabilidad limitada*, SRL), and limited partnerships (*sociedades comanditarias por acciones*). Therefore, LSC establishes a common frame to directors of capital companies, with some specific specialties according to the capital company type.

This Act was recently amended by the Act 31/2014 of 3 December, amending the Capital Companies Act to improve corporate governance. However, the legislative initiative included – not only changes on corporate governance – but certain changes in the functioning of the corporate bodies: general meeting and directors.

This paper is specially thought for who are not familiar with Spanish Law on capital companies, and its object is to set out the legal regime of directors of joint stocks companies, specially their skills, organization, status, and to compare this with Turkish model.

II. ORGANISATIONAL ARRANGEMENTS

A. ORGANISATIONAL ARRANGEMENTS (GENERAL) AND NUMBER OF DIRECTORS

The directors are empowered to manage and represent the company, before or outside Courts, under the terms provided in LCS (art. 209 of LSC), especially according to organisational arrangements, which are four in Spain. Indeed, company administration may be entrusted to a sole director, several directors acting jointly or individually, or to a board of directors (art. 209 of LSC). These models are related to the number of directors: a sole director, one director; when administration is entrusted to two directors acting jointly, two directors; when it is entrusted to more than two directors acting jointly, they shall form a board of directors, with a minimum of three people. The by-laws may establish the exact or a minimum and maximum number of members for the board of directors. In the latter case, the general meeting shall determine the exact number of the board. Finally, when administration is entrusted to several directors acting individually, they can be two or more people, and each one acts as a sole director, but by-laws can set territorial or competences performance limits among them.

According to the attribution of the power or representation: i) where the company has a sole director, that director shall necessarily be vested with representative powers; b) where it has joint and several directors, all shall be vested with representative powers, without prejudice to the provisions of the by-laws or any decisions that may be adopted by the general meeting on the distribution of powers, whose scope shall be purely internal; c) where it has two joint directors, representative powers shall be held jointly; and d) in companies with a board of directors, representative powers shall be vested in the board itself, acting collegiately. The by-laws may nonetheless vest one or several members of the board with representative powers, individually or jointly. In this case, when the board delegates its powers to an executive committee or one or several managing directors, it shall delimit the scope of their action.

The organisational arrangements must be on by-laws and they can be changed by a general meeting. If by-laws include some or all of them, and general meeting changes to one of them, it is not necessary to amends the by-laws. So, it is neccessary to change the by-laws in any other case. In addition, any decision that alters the arrangements for corporate governance, whether or not it entails amending the by-laws, shall be recorded in a public instrument and registered in the Mercantile Registry.

B. BOARD OF DIRECTORS

Among the different organisational arrangements, LSC has a specific regulation on the board of directors (arts. 242-251 of LSC). First, it refers to the number of directors and specific ways of appointment (proportional representation and cooptation), and then about organisation and modus operandi. Indeed, in joint stock companies, unless otherwise specified in the by-laws, and similar to art. 366 of the Turkish Commercial Code No. 6102 (hereinafter, the TCC), the board of directors may designate its chairman – but not every year as art. 366 of the TCC says –, regulate its own modus operandi and accept the resignation of directors. Also, the board of directors must meet at least once per quarter.

Meetings of the board of directors shall be convened by a chairperson or an acting chairperson. Directors comprising at least one third of the members of the board may convene a meeting, specifying the agenda, which must be held in the town or city where the registered office is located if the chairperson, after being asked to do so, fails to convene the meeting within one month of the request.

The quorum for board of directors' meetings shall be a majority of its members, attending in person or by proxy, and decisions shall be adopted by the majority of directors attending. It is also possible voting in writing outside meetings when no director objects to this procedure. In any case, the board of directors' discussions and decisions shall be recorded in a minutes book, which shall be signed by the chairperson and the secretary.

Finally, directors may challenge agreements by the board of directors or by any other governing body, within thirty days of their adoption. Similarly, such agreements may be challenged by any partner or partners who represent one percent of the corporate capital, within thirty days of becoming aware of these agreements and provided not more than one year has elapsed since their adoption.

LSC also states what powers could be delegated or not. First, art. 249 of LSC says that unless otherwise specified in the company by-laws and without prejudice to the powers of attorney that may be granted to any person, the board of directors may designate from among its members, one or more delegated directors or executive committee members, establishing the content, limitations and duties of this delegation. The permanent delegation of any of the board of directors' powers to the executive committee or to any delegated director and the appointment of any director to occupy these positions, shall require the favourable vote of two thirds of the board members and shall not take effect until the registration in the Companies Register.

Further, when a member of the board of directors is nominated as a delegated director or is granted executive duties with regards to the other title, it shall be necessary to draw up a contract between the director and the company, which must be pre-approved by the board of directors with a favourable vote of at least two thirds of its members. The implicated director must refrain from attending the deliberations and from participating in the vote. The approved contract must be incorporated as an annex to the session's minutes. That contract shall detail all the concepts for which remuneration could be obtained for the completion of executive duties, including, when relevant, eventual compensation for early cessation of such duties and sums granted by the company for insurance premiums or as contributions to savings schemes. The director may not receive any remuneration for the completion of any executive duties whose quantities or concepts are not detailed in this contract. The contract must conform to the approved remuneration policy, when relevant, by the general meeting.

On the other hand, art. 249 bis of LSC, says that the board of directors may not delegate under any circumstances, the following powers: a) supervising the effective operation of any committees established or the performance of any delegated bodies or managers it may have nominated; b) determining the company's general policies and strategies; c) authorising or allocating the obligations arising from the duty of loyalty in accordance with the provisions of art. 230; d) its own organisation and performance; e) preparing the annual statements and presenting said statements to the general meeting; f) preparing any type of report required from the board by law, assuming that the operation to which the report refers cannot be delegated; g) nominating or removing delegated directors from the company, or establishing the conditions of their contract; h) nominating or removing managers on whom the board or some of its members may directly depend, such as establishing the basic conditions of their contracts, including remuneration; i) decisions relating to directors' remuneration, within the statutory framework and, when relevant, the remuneration policy approved by the general meeting; j) calling the shareholders' general meeting and preparing the agenda and proposal for agreements; k) the policy relating to shares or own shares; and l) any powers that the general meeting has vested to the board of directors, unless the board has explicitly authorised that they may be sub-delegated.

III. STATUS OF DIRECTORS

A. APPOINTMENT

To be a director, it is necessary that the appointment is made according to the established legal forms, and that the elected person meets the requirements. First, they are four ways to appoint the directors: company formation, general meeting, proportional representation and cooptation.

In *company formation*, the formation of joint stock companies must be recorded in a public instrument, which shall be registered in the Mercantile Registry. The deed of incorporation of a joint stock company must include a minimun contents, and among them is the identity of the person or persons initially entrusted with company management and representation (art. 22.1.*e)* LSC).

General meeting is the most popular way of appointment. Indeed, competence to appoint directors shall be held by the general meeting subject only to the exceptions provided by law (company formation, proportional representation and cooptation) (art. 214 of LSC).

Proportional representation and *cooptation* are two specific ways of appointing directors for the board of directors of a joint stock company. So, they only can be convenient for the board of directors (not for the appointment of a sole director, several directors acting jointly or individually) and joint stock companies (not limited liability companies).

Regarding *Proportional representation*, in joint stock companies, shares that are voluntarily grouped to constitute to a share capital amounting to or exceeding the sum resulting from dividing the capital by the number of members of the board of directors, shall be entitled to designate the number of members deduced from the proportion of share capital so grouped, rounding any fractions. If this power is exercised, the shares so grouped shall not take part in the election of the remaining members of the board (Art. 243 of LSC). With proportional representation, minority shareholders can have a representative in the board of directors.

In Turkey, the representation of certain groups on the board of directors is possible, but in a different way than by proportional representation. Indeed, according to 360.1 of the TCC: *"(1) Provided that it is stated in the articles of association, certain share groups, shareholders consisting of a certain group in terms of their qualities and nature, and minorities can be granted the right to be represented on the BoD. For this purpose the articles of association can stipulate that board members shall be elected from among shareholders comprising a certain group, certain share groups and minorities, or that the right to nominate a candidate for the BoD can also be granted to them in the articles of association. It is mandatory that the candidate nominated by the GA as a board member or who is a member of the group and the minority to whom the right to nominate is granted shall be elected absent fair cause to oppose that candidate. The number of board members performing representation in this way cannot exceed half of the members of the BoD in public joint stock companies. The regulations regarding independent board members remain in force. (2) The shares entitled to be represented on the BoD according to this article shall be considered as privileged shares".*

In relation to *cooptation*, in joint stock companies, if vacancies should arise during the directors' term and no deputies have been appointed, the board may designate from among the company shareholders the person or persons who are to fill such positions until the next general meeting is held (art. 244 of LSC). To facilitate the functioning of board of directors and company too, cooptation allows directors to appoint new directors, but just until the next general meeting. In that general meeting, shareholders (i) authorize the appointment, (ii) decide to appoint other people, (iii) neither authorize nor appoint others, (iv) or choose other organisational arrangements, when they neither authorize nor appoint others, and the board of directors has members fewer than three people. The TCC has cooptation too, regulated in art. 363.1 of the TCC.

About the requirements, elected persons must meet the legal and by-laws requirements. In relation to legal requirements, directors may be individuals or bodies corporate and, unless specified otherwise in the by-laws, they do not have to be partners or shareholders (art. 212 of LSC). When a body corporate is appointed as a director, a single natural person must be permanently designated thereby to fulfil the duties incumbent upon the position. By-laws can demand more requirements, such as a certain academic education, profesional prestige, experience, age, etc.

In this regard, previous art. 359.1 of the TCC required that at least one member who is authorised for representation had to be a Turkish citizen domiciled in Turkey, and at least one-quarter of the members of the board of directors had to be university graduates (art. 359.3 of the TCC). Also, if a member of the board of directors is terminated, then this person couldn´t seek re-election to the board of directors (art. 359.4 of the TCC). In Spain there wasn´t similar rule to the latter. However, Art. 359 of the TCC has been amended and these requirements were excluded in the new versión, which refers to the case where a legal entity is elected as a member of the board of directors (only one real person who is determined by the legal entity in the name of such legal entity must be registered and announced along with the legal entity. In addition, the information regarding the registration and announcement must be posted immediately on the company's website. Only this registered person may participate in and vote on behalf of the legal entity at the meetings, and must have full capacity to act). So, anyone can actually seek re-election after his removal from the Board.

However, these Spanish by-laws requirements cannot avoid the prohibitions to be directors. Indeed, the chosen person must meet the requirements indicated and not to be in case of prohibition. According to art. 213 of LSC, none of the following is eligible to be a company director: non-emancipated minors, the legally incompetent, persons disqualified pursuant to the Insolvency Act during the disqualification period established in the insolvency ruling, and persons convicted for any manner of falsehood or of crimes against freedom, property, socio-economic order, public safety, or the administration of justice, and anyone whose position is incompatible with commercial endeavours. Public officials whose responsibilities are associated with activities intrinsic to the companies in question, judges or magistrates and other persons bound by legal incompatibility are likewise ineligible.

Finally, directors' appointments shall be effective upon their acceptance of their positions and, application shall be made for entry of their appointment in the Mercantile Registry, specifying in the application the identity of the appointees and, for directors vested with powers to represent the company, whether they can act individually or are bound to do so jointly. The application for entry in the Registry shall be made within ten days of acceptance.

B. TERM OF OFFICE

The directors of joint stock companies shall hold their offices for the term established in the by-laws, which may not exceed six years and must be the same for all directors. However, directors may be re-elected on one or several occasions for terms of the same duration. In Turkey, the board of directors' members are elected for a term of no more than three years (art. 362.1 of the TCC).

On the contrary, the directors of limited liability companies may hold their offices indefinitely unless the by-laws establish a specific term, in which event they may be re-elected on one or more occasions for terms of the same duration (Art. 221 of LSC).

C. DISMISSAL

About the dismissal, directors may be dismissed at any time by the general meeting, even when dismissal is not included on the meeting agenda (art. 223 of LSC). In addition, LSC regulates two specific ways of dismissal on art. 224 of LSC: first, directors subject to any legal prohibition shall be dismissed immediately at the behest of any shareholder, without prejudice to the liability they may incur for their disloyal conduct; second, directors and persons holding whatsoever interests that clash with company interests shall be dismissed by a decision adopted by the general meeting at the behest of any shareholder.

The relation between directors and joint stock company could ending too by: resignation; *expiry*, directors' appointments shall expire at the first general meeting held at the end of their term, or on the deadline for holding the general meeting for the review and approval, as appropriate, of the preceding year's financial statements (art. 222 of LSC); the decisión to bring corporate action to demand liability or reach a settlement shall entail dismissal of the directors concerned (art. 238 of LSC); upon institution of liquidation proceedings, the directors shall be dismissed from their positions and their powers to represent the company shall be terminated (art. 374 of LSC); in insolvency, (i) the judicial resolution that opens the winding-up phase shall contain the declaration of dissolution if this has not been resolved and, in all cases, severance of the directors or liquidators, who shall be replaced by the insolvency practitioners, without prejudice to the former continuing to represent the insolvent debtor in the proceedings and in the procedural pleas to which it is party (art. 145.3 of the Spanish Insolvency Act), and (ii) the ruling classifying the insolvency as tortious (art. 172.2.2 of the Spanish Insolvency Act). So, if a director is declared insolvent, his membership will be not automatically terminated, as in Turkey (art. 363.2 of the TCC).

D. REMUNERATION

The role of a director is unpaid, unless the company by-laws provide otherwise and establish a remuneration system. In praxis, most directors are paid, but LSC requires that by-laws establish a remuneration system to control directors' remuneration, to protect both shareholders and directors, and to inform creditors and any other interested.

The established remuneration system shall determine the concept or concepts for which directors should be remunerated and which may consist, among others, of one or various of the following: a) a fixed assignment; b) attendance fees; c) shares in the profits; d) variable remuneration with general indicators or benchmarks; e) remuneration in shares or linked to their growth; f) compensation for dismissal, assuming that the dismissal was not motivated by incompletion of the director's duties; g) any savings systems or provision deemed appropriate.

The maximum amount of annual remuneration for directors in their capacity as such, must be approved by the general meeting and shall remain valid until an amendment of the same is approved. In addition, unless the general meeting decides otherwise, the distribution of remuneration among each director is established by an agreement with the same and, in the case of the board of directors, by the said board's decision, which must take the duties and responsibilities of each director into consideration.

Also, in all cases, directors' remuneration must remain proportionate to the significance of the company, the economic situation at that moment and the market standards of comparable companies. The established remuneration system must be designed to promote the long-term profitability and sustainability of the company and incorporate the necessary precautions to avoid excessive risk-taking or rewarding unfavourable results.

Finally, LSC regulates in arts. 218 and 219 of LSC, two remuneration systems: remuneration via a share in profits, and remuneration linked to company shares. First, when remuneration includes a share of the profits, the company by-laws shall determine the maximum share or percentage thereof. In the event of the latter, the general meeting shall determine the percentage to be applied, within the maximum established by the company by-laws. This share may only be drawn from net earnings and only after having provisioned the legal and statutory reserves and designated a four-percent nominal dividend for the shareholders, or higher, if so provisioned in the by-laws.

When the remuneration system for directors includes the awarding of shares, share options or remuneration linked to the value of shares, the said system must be explicitly mentioned in the company by-laws; and the application of such provisions shall require an agreement by the shareholders' general meeting. The agreement by the shareholders' general meeting must include the maximum number of shares to be assigned during each financial year, the strike price and the system used to calculate the strike price of share options, the value of the shares taken as a reference, when appropriate, and the term of the remuneration plan as a part of this remuneration system.

So, LSC has a more extended regulation about remunerations than the TCC, whose art. 394 states: "*Provided that the amount is determined by the articles of association or the GA resolution, board members can be paid an honorarium, salary, bonus, a premium and a portion of the annual profit*".

E. DIRECTORS´ DUTIES

The arts. 225 to 232 of LSC regulate the directors' duties with two principal ideas: the diligence of an orderly businessperson, and loyal representatives. First, arts. 225 and 226 of LSC are about due diligence and business judgement rule, respectively. According to art. 225 of LSC, directors must carry out their role and fulfil their tasks in accordance with the laws and by-laws, with the diligence of an orderly businessperson, taking into account the nature of the role and the duties inherent in each one. Also, directors must possess the appropriate dedication and adopt the necessary measures for good management and control of the company, and when fulfilling their duties, directors have the right to demand and seek from the company, the appropriate information necessary for them to complete their obligations.

Art. 226 of LSC includes the business judgement rule in our Law. Indeed, this article states that with regards to strategic and business decisions subject to business judgement rule, the standard of diligence from an orderly businessperson is understood to have been fulfilled when the director acts in good faith, without personal interest in the matter being decided, with sufficient information and organisation to be able to proceed to an appropriate decision. It is not considered under the business judgement rule any decision that may personally affect other directors or related persons (the director's spouse or persons with an analogous relationship; the director's or his/her spouse's parents, children and siblings; the spouses of the director's parents, children and siblings; companies with which the director, directly or by proxy, is affiliated in any of the manners described in art. 42, paragraph one of the commercial code; and when directors are bodies corporate, their affiliates are *de jure* or *de facto* directors, liquidators, and attorneys with general powers of attorney in the company's body corporate director; or companies forming part of the same group and their partners or shareholders).

Duty of loyalty is regulated in arts. 227 et seq of LSC. According to art. 227 of LSC, directors must perform their roles as loyal representatives, operating in good faith and in the best interest of the company. So, if they breach this duty, they shall be bound to compensate any damage caused to company assets and also to return to the company, any unjust gains obtained.

This duty of loyalty binds director, in particular, to: a) not exercise their powers for any end purpose other than that for which they were granted; b) maintain the confidentiality of any information, data or records to which they may have access in the course fulfilling their role, including after said role has ceased, except in any case where the law allows or requires disclosure; c) refrain from participating in discussions and votes on agreements and decisions in which the director or a related person may have a direct or indirect conflict of interests, except agreements and decisions that affect the director in their position as such, for example assignment or reduction of roles within the directing body or other similar decisions; d) fulfil their roles under the principal of personal responsibility with freedom of opinion and judgement and independence with respect to the third party instructions and links; e) adopt the necessary measures to avoid situations arising in which their interests, whether their own or of another party, may enter into conflict with the company's interests and their duties to the company.

In particular, the duty to avoid any situations of conflict of interests binds the director to refrain from: a) completing transactions with the company, except when these are ordinary transactions, made under standard customer conditions and are of scarce relevance, understood to mean anywhere information is not needed to fairly express the entity's assets, financial situation or profits; b) using or invoking their position as director to unduly influence the completion of private transactions; c) making use of company assets, including confidential company information, for private ends; d) taking advantage of the company's business opportunities; e) obtaining advantages or remuneration from third parties separate to the company or its group, related to the fulfilment of their role, unless it refers to simple expressions of courtesy; f) performing activities on their own or others' behalf that entail a current or potential effective competition with the company, that would otherwise place them in permanent conflict of interest with the company's interests.

In all cases, directors must inform the other directors and where necessary, the board of directors or, in the event of a sole director, the general meeting, of any direct or indirect situation of conflict of interests that they or any person associated with them may have with the company's interests.

Finally, the system with regards to loyalty and responsibility for breaching the same is imperative, and by-laws limiting or contrary to this system shall not be valid. Notwithstanding, the company may exempt the prohibitions contained in exceptional circumstances, by authorising a director or related person to complete a particular transaction with the company, use certain company assets, take advantage of a specific business opportunity or obtain an advantage or remuneration from a third party.

When the release from prohibition refers to obtaining a benefit or remuneration from third parties, or affects a transaction with a value exceeding ten percent of the corporate assets, the authorisation must be duly agreed by the general meeting. In all other cases, the directing body may authorise aforementioned release, assuming that the members who grant it are independent from the director to whom it is being granted. Furthermore, it is necessary to ensure that the authorised operation shall not affect corporate assets and, if relevant, that it is conducted within market conditions and with full transparency.

The obligation not to compete with the company may only be subject to exemption in the event that no damages are expected to be suffered by the company or that the damages expected to be suffered shall be compensated by the benefits forecast to be gained by obtaining the said exemption. The exemption shall be granted through the explicit separate agreement of the general meeting. In all cases, at the request of any partner, the general meeting shall decide upon the severance of a director who performs competitive activities, when the risk of damage to the company becomes relevant.

F. DIRECTORS' LIABILITY

Directors' liability is one of the most important subjects on directors. Arts. 236, 237 and 241 bis of LSC regulate budgets, subjetive extension, joint and several liability and prescription of actions for liability; arts. 238-240, corporate action; and art. 241 of LSC, individual action.

First, arts. 236 and 237 of LSC state that directors shall answer to the company and its partners and creditors for any damage caused by their acts or omissions contrary to the law or the by-laws (in these cases, guilt shall be presumed until proven otherwise) or for having failed to complete any duties inherent to their roles, assuming that there has been misconduct or negligence.

All members of the governing body adopting the detrimental decision or performing the respective act shall answer jointly and severally, unless they prove that having taken no part in its adoption or implementation, they were unaware of its existence or, if aware, took all reasonable measures to prevent the damage or at least voice their objection thereto. Also, under no circumstance shall the fact that the act or agreement has been adopted, authorised or ratified by the general meeting waive liability for the detrimental agreement.

Directors' liability is extended equally to *de facto* directors. To wit, persons who perform the tasks and role of director without the title, or with a null or void title, or with another title, are considered *de facto* directors, such as, for example, any person under whose instructions the company directors act.

Likewise, when no permanent delegation powers of the board exist in one or more directors, all provisions regarding directors' duties and liabilities shall be applied to the person, whatever their position, who has the highest management role in the company, without prejudice to the actions of the company based on their legal relation to said person.

About *corporate action*, art. 238 of LSC states that the action to demand director liability shall be brought by the company pursuant to a general meeting decision, which may be adopted at the behest of any shareholder even when not included in the agenda. The by-laws may not require a qualified majority for the adoption of such decisions. Also, the general meeting may reach a settlement in or waive such action at any time, unless an objection is raised thereto by partners or shareholders representing five percent of the capital. In any case, the decision to bring action or reach a settlement shall entail dismissal of the directors concerned, and the approval of the financial statements shall niether preclude action for liability nor constitute a waiver of the action agreed or brought.

In addition to the corporate action to demand liability decided by the general meeting, this can be carried out by the minority and the creditors. Thus, according to art. 239 of LSC, any partner or partners individually or jointly representing a share that permits them to request a general meeting, shall be able to bring action for liability to defend corporate interests when the directors fail to convene the general meeting requested for these purposes, when the company does not bring the said action within one month of the date of the adoption of the respective agreement, or when the meeting decides against the claim for liability. Also, when it is based on the breach of the duty to loyalty, the partner or partners may exercise the action for liability directly, without the need to submit the decision to the general meeting. On the other hand, art. 240 of LSC states that the company's creditors may institute corporate action for liability against its directors when not brought by the company or its partners or shareholders if the company has insufficient assets to repay its loans.

About *individual action*, art. 241 of LSC says that actions for indemnity that may be incumbent upon partners or shareholders or third parties for directors' action that is directly detrimental to their interests shall be excepted.

Finally, according to art. 241 bis of LSC, action for liability against directors, whether corporate or individual, shall expire four years from the day on which it could have first been exercised.