



# Business Economics II

Session II: Legal forms



# Introduction

Business organizations are created:

- To exploit the benefits of specialization
- To manage risks
- . . .and due to other reasons

(e.g. “optimization of the tax burden”)



## Legal forms

- o To create a company in Spain, limited possibilities to formalize its creation
  - o Called “legal forms”
- o It is very important to choose legal form of the company, because
  - o Paperwork
  - o Fiscal and labor obligations



## Factors

- o Capital availability
- o Number of partners
- o The level of liability that owners are willing to accept (limited or unlimited)
- o The type of activity



## Types of companies

- o Natural person
  - o Company does not have its own entity
  - o One or several individuals (natural persons) act as a company
- o A legal person (juridical person or juristic person)
  - o Company's entity is different from the one of its owners



## Types of individual companies (I): empresario individual

- o Natural person
- o Commercial, industrial or professional activity
- o 18 years of age
- o Entitled to residual profits
- o No minimal capital required
- o Income from the business “passes through” to the owner’s personal tax return (i.e., “IRPF”)
- o Augusto and EHL



## Types of individual companies (II): sociedad civil privada

- o Contractual
- o Formed by several people
- o Without legal entity on its own
- o Secret dealing
  - o Legal object
  - o In common interests of participants
  - o Limited time frame
- o No capital limit
- o Taxed IRPF



## Legal person

- o “Partnerships” dominant
  - o Two or more partners, no capital limit
- o “Civil”
  - o Unlimited liability
  - o Often not for profit
- o Trade partnerships
  - o Contract were several people put together goods, money, work...
  - o Goal is profit and distribution among them



## Sociedades mercantiles

“Personalistas”: No limits to personal liability

“Capitalistas”: Shareholders have limited liabilities based on their contributions



## Sociedades personalistas

- o General partnerships
- o Limited partnerships



## General partnerships

- The number of owners are two or more (no maximum).
- All the partners participate in management and control of the company
- Each partner is jointly and individually is liable for the obligations of the partnership
- There is no minimal capital
- Pay “impuesto de sociedades” – corporate tax



## Example

- <http://www.pictet.com/en/home/about/overview.html>



## Limited partnerships

- o There are two types of partners
  - o **“General” partners** manage the business, and are personally liable for the partnerships’ debts
  - o **“Limited” partners** contribute capital and share profits but take no part in running the business
    - o They incur no liability beyond their capital contributions
- o The minimal number of partners is two (one of whom should be “general” and the other “limited”)
- o The “partner” title can’t be transmitted freely without the agreement of the other partners
- o There is no minimal capital for starting
- o Taxed at corporate level ( “el impuesto sobre sociedades”).



## “Capitalist” firms

- o Sociedad comanditaria por acciones
- o Limited liability partnership (Sociedad de responsabilidad limitada)
- o Corporation (Sociedad anónima)
- o Labour association (Sociedad laboral)



## Sociedad comanditaria por acciones

- o Similar to the limited partnership
- o The difference is that “limited” partners contribute their capital through shares, which represent equal parts of the capital
- o Minimum capital is 60101.21€
- o Number of “limited” partners at least 3
  - o At least one “general” partner who manages the company



## Limited liability partnerships (Sociedad Limitada)

- o Number of partners one or more
- o If there is only one partner: “unipersonales”
- o The partners are not liable with respect to company’s debts and obligations and risk only the capital they contributed
- o The minimal capital is 3005.06€
- o Taxed at corporate level



## Examples



<http://www.solismoda.com/>



<http://www.ago-reformas.com/>



[http://www.mercaconsult.com/qui\\_som](http://www.mercaconsult.com/qui_som)



## Limited corporation

- One or more partners
- They incur no liability beyond their capital contributions
- The minimal capital is 60101.21€
  - Divided into shares
- Shares may be freely traded
  - The corporation is registered at “registro mercantil”
- Taxed at corporate level



Tipos de acciones		
Según los derechos		
<b>Ordinarias:</b> No tienen ningún derecho especial	<b>Privilegiadas:</b> tienen algún privilegio, como recibir un dividendo mínimo	
Según la titularidad		
<b>Nominativas:</b> la acción incorpora el nombre del propietario	<b>Al portador:</b> la acción es propiedad del que la posee	
Según el capital:		
<b>Ordinarias:</b> son aquellas que están desembolsadas mediante moneda (al comprarlas se paga en moneda)	<b>Propias:</b> son aquellas en las que, en contraprestación al pago, se admite una aportación en especie (bienes)	<b>Liberadas:</b> en este caso la acción se emite con cargo a reservas (beneficio no repartido, es decir, reinvertido) por una parte, o, si están totalmente liberadas, en su totalidad



## Examples



**MANGO**



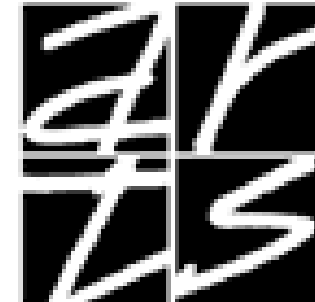
**BBVA**



**Criteria**  
CAIXA CORP



**Sogecable**





## Sociedad laboral (labour association)

- Sociedad anónima or responsabilidad limitada with
  - **At least 51% held by workers**
- Nobody can have more than 33% del capital, except state entities (49%)
- At least four partners, of those three workers
- Limited liability to capital contributions
- **Capital in nominative shares or “participaciones”**
  - Payment for those shares: at least 25% if S.A.L or 100% if it is a S.L.L,
  - Capital amounts 60101.21€ o 3005.06€.



## Sociedad laboral (labour association)

- Two types of shares:
  - Clase laboral (for employees)
  - Clase general (non-employees, if any)
- When it is time to sell, preference for
  - Employees with “indefinite contracts” who are not shareholders
  - Employees who are shareholders
  - Non-employee shareholders
  - Other employees
- Compulsory to build reserves with 10% of profits



## The importance of labour associations

- There were 92,689 workers as of September 2001 working for labor associations (compared to 15,000,000 in labor force)
- Labor associations were the “emergency rooms” for enterprises entering crisis in 1980s



## Empirical facts

- o In general,
  - o There are more S.L. than S.A.
  - o S.A. usually have greater capital and more employees per organization than do S.L.



## Other types of organization

- Not-for-profit organizations (NGO)
- Foundations
- Cooperatives
- Labor unions



## Sociedad interés social: "cooperatives"

- o People with common interest, business profit "excedentes" are split among shareholders
- o Some members may contribute with money only and get an interest in the venture
- o Liability is limited to the contributions



## Cooperatives

- Minimum capital depends on the number of members
- Nobody can have more than 25% of capital
  - Paid at least 25% when the company is created
- “Sociedad cooperativa” or “S.Coop”: S.Coop.V (Valencia), S.Coop.And (Andalucia)...
- 30% of profit to Reserves and to be used for education and training



## Examples



- <http://www.mcc.es/>
- <http://www.ciabel.com/ciabel.htm>
- <http://www.unio.coop/>





## Advantages of cooperatives (I)

- Participation in the company's profits
- An organization better alligned to its interests
- A "humanized" climate

Might lead to greater work effort and productivity



## Advantages of cooperatives (II)

- o “Brotherhood” and solidarity among workers
- o Common interests
- o Equality
  
- o This in theory should reduce the costs of monitoring and control
- o Cooperatives stimulate the expression of the management potential of its associates, which is not usually the case in other forms of organizations (Unless they use “*empowerment*” strategies)



## Problems of cooperatives

- Coordination (e.g. the need for general meetings) and managerial problems
- Limitedness of resources



## Coordination and management

- o The need for general meetings and consensus to reach decisions
- o All the workers are involved in management – this provides grounds for free-riding as well as lowers the incentives to participate in management activities

*Cooperatives are better suited for the types of activities that do not require specialized control and can benefit from mutual control*



## Limited resources

- The workers are usually the only ones contributing to the capital of the enterprise
- Usually possible cooperative outside investors do not want to assume risks and without decision power
- It is difficult to obtain credit
  - Reputation of managers
  - Political uncertainty at the organizational level



## Summary of legal form

PERSONALIDAD	FORMA	N° SOCIOS	CAPITAL	RESPONSA BILIDAD	FISCALIDAD DIRECTA	
PERSONAS FÍSICAS	Empresario individual	1	No existe mínimo legal	Ilimitada	IRPF	
	Comunidad de bienes	Mínimo 2	No existe mínimo legal	Ilimitada	IRPF	
	Sociedad civil	Mínimo 2	No existe mínimo legal	Ilimitada	IRPF	
PERSONAS JURÍDICAS	Sociedades Mercantiles	Sociedad colectiva	Mínimo 2	No existe mínimo legal	Ilimitada	Impuesto de Sociedades
		S.L.	Mínimo 1	Mínimo 3.005,06 €	Limitada al capital aportado	Impuesto de Sociedades
		S.A.	Mínimo 1	Mínimo 60.101,21 €	Limitada al capital aportado	Impuesto de Sociedades
		Sociedad comanditaria simple	Mínimo 2	No existe mínimo legal	Socios: Ilimitada	Impuesto de Sociedades
		Sociedad comanditaria por acciones	Mínimo 2	Mínimo 60.101,21 €	Comanditar: Limitada	Impuesto de Sociedades
		Sociedad laboral	Mínimo 3	Mínimo 60.101,21 €	Limitada al capital aportado	Impuesto de Sociedades
		Cooperativa	Sociedad	Mínimo 3	Según estatutos	Limitada al capital aportado



## Public and private corporations

The distinction is based on the ease of acquiring and abandoning the status of a shareholder

- *Public corporations:* easy entry/exit of equity shareholders (Stock markets)
- *Private corporations:* strong barriers to entry/exit of shareholders



# Public corporations

- Advantage
  - Separation between ownership (shareholders) and control (managers)
- Disadvantage
  - Agency problems between ownership and management



An agency relationship exists when



The Agency problem occurs when:

The desires or goals of the principal & agent conflict and it is difficult or expensive for the principal to verify that the agent has behaved appropriately.



## Private corporations

- o Characteristics:
- o Smaller than public corporations
- o Have less sources of equity financing
- o Personality conflicts between shareholders arise due to possible conflicts of interests
- o Ownership-control/management duality conflict: managers are the same as the owners



## Power conflicts in private corporations

- Between majority and minority shareholders:
  - Majority shareholders: Have more to loose
  - Minority shareholders: Can block decisions
- Between founding shareholders and others:
  - Personality conflicts/power struggles
  - The substitution problem



## Solutions

- o Define exit rules
  - o Who buys the shares (loss of capital) and at what price (valuation)
- o Qualified majorities (60%, 75%, . . . )
  - o Empowers minority shareholders
- o Creation of shares without voting rights and with limited rights



## Summary

- o Companies and other organisations
  - o NGO, trade unions, foundations
  - o Cooperatives
- o Public and private corporations