

Right of a withdrawal from a commercial corporation

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One of the fundamental rights of a shareholder is the right to withdraw from the corporation. The General Law of Commercial Corporations (the "Law") regulates this right in Articles 15 and 220.

Article 15 refers to all types of commercial companies in general, and Article 220 refers to variable capital "Capital Variable" corporations. However, from our point of view, these articles do not contain sufficient provisions to cover the right of withdrawal.

According to the Law in effect, if a shareholder of any type of commercial corporation decides to withdraw from the corporation for any reason, the other shareholders will have no ability to prevent him from doing so. The withdrawing shareholder will be entitled to require from the corporation the corresponding restitution of his equity interests, and the Law establishes the time when restitution shall take place.

Unfortunately, the Law is not clear on what exactly is to be restituted or on the criteria for quantifying equity interests.

The above-mentioned articles of the Law state the following:

"Art. 15. In the event of a shareholder's exclusion or withdrawal, except in variable capital corporations, the corporation shall be entitled to retain the shareholder's portion of equity and revenues until the closing of any operations pending at the time of exclusion or withdrawal. Thereafter, the liquidation of the shareholder's participation [in Spanish, *haber social*] in the corporation shall take place."

"Art. 220. The partial or total withdrawal of a shareholder's contributions [in Spanish, *aportaciones*] shall be reported to the corporation in a feasible manner. If notification is given before the last quarter of the year, the withdrawal will not have an effect until the end of the fiscal year; if notification is not given before the last quarter of that year, the withdrawal will not have an effect until the end of the following fiscal year.

As provided in Article 15, restitution would consist of the corresponding equity and revenues, after the liquidation of the shareholder's "participation". However, the scope of the meaning and the method for determining such participation (*haber social*) are not specified (whether according to commercial value, book value, the par value of the stock, or another method).

Article 220, regarding variable capital corporations, refers to the withdrawal of contributions [*aportaciones*]. The literal meaning of *aportaciones* involves solely the money or assets delivered by the shareholder to the company for its incorporation or as subsequent paid-in capital. Therefore, the use of the word, *aportaciones*, in the context of withdrawal creates uncertainty.

Based on the unfortunate and insufficient wording of Articles 15 and 220 of the Law, and especially of Article 220, in some cases, certain variable capital corporations have attempted to return to withdrawing shareholders only their contributions (*aportaciones*); (i.e., the money or assets delivered by the shareholder to the company for its incorporation or as subsequent paid-in capital) and not the real and current value of their equity interests and revenues.

Besides basing such actions on the Law, corporations that have proceeded in this manner have assumed that when a shareholder decides to withdraw from a corporation, the corporation undergoes real damage, mainly because of the implied decrease in capital; and that as a penalty for said damage, the shareholder should receive only the value of his contributions, calculated as the par value of his stock in the corporation.

In our opinion, the word *aportaciones* (contributions) refers to the money or assets delivered by the shareholder to the company for its incorporation or as subsequent paid-in capital. However, we believe that Mexico's legislators did not wish to give that connotation to the article and that the wording is simply unfortunate. Otherwise, the provision would not be based on equity principles by any means. In addition, we believe that corporations proceeding in such a manner would be retaining money and assets over which they have no ownership rights.

We certainly believe that shareholders are entitled to recover the exact value of their equity interests, including revenues, when they withdraw from a corporation. However, it is less clear whether the value of those equity interests should be based on a commercial value or on an accounting value. Unfortunately, the Law does not specify the criteria for determining value.

We believe the Law must regulate this subject in a more complete manner and establish all the necessary provisions to prevent misinterpretations and uncertainty within corporations, as well as unnecessary lawsuits among shareholders.

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