REPORT REGARDING CHANGES TO THE LAW GOVERNING *SOCIEDADES LABORALES*

PREPARED BY THE SPANISH BUSINESS CONFEDERATION OF SOCIEDADES LABORALES

(CONFESAL)

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REPORT

ON THE
AMENDED OR NEW LAW FOR SOCIEDADES LABORALES

BACKGROUND

1. *SOCIEDADES LABORALES* arose as a necessary response to the demands of companies

This type of company came into existence under the scope of paternalist regulations set down under the Franco dictatorship. Particularly under **Law setting up the National Work Protection Fund (FNPT) 45/1960 dated 21 July creating national taxation and savings funds and more specifically under Section III of that law which established the FNPT from 1-1-61 for the following purposes: "To provide necessary help to those workers who, in accordance with current legislation, cease to be employed due to the application of plans for improved work rationalisation and the development and improvement of facilities, proposed either by companies or entire sectors of a particular industry and approved by the Government."**
This regulation was applied through ministerial orders and funded from the annual budgets. It meant that workers' collectives within companies undergoing crises could acquire shares in the company for which they worked and thus contribute to its longevity. This aspect was mainly promoted by the governments in power during the transition to democracy and resulted in a large number of SOCIEDADES LABORALES being incorporated while at the same time giving rise to a high number of failures due, on the one hand, to the financial difficulties the Spanish economy was encountering at the time and also to the tremendous difficulty of redressing companies that were in a great deal of debt due to the way they had been run by company directors and by company owners, prior to the employees becoming shareholders.
The White Paper on Companies Financial Sector in Spain sponsored by the Ministry for Work and Social Security (1992) and led by Professors José Barea and José Luis Monzón clearly refers to this where it states: "At all events, the fact that of 5,944 SAL (*Spanish Public Workforce Owned Limited Companies)* registered on official lists as at 31 December 1988 only 58% of these were still operational by the second half of 1990 is, however, still a pertinent detail."
Most, i.e. 76%, of the *Spanish public workforce owned Limited Companies* (SAL) in existence on that date had been set up since 1987, specifically 3.472 companies employing 54.343 workers. The first law to bestow these companies with specific judicial characteristics was Law 15/1986 regarding Spanish public workforce owned Limited Companies (SAL) dated 25 April.

2. The Role of economic and company agencies. Majority Unions.

The success of the *SOCIEDADES LABORALES* can be clearly seen from the numbers of companies that were set up and the level of survival over time.
Several factors were involved in this towards the late nineteen seventies and early nineteen eighties:

- The severe crisis undergone by the Spanish economy, within the context of a world crisis and, particularly, the political crisis of the transition from dictatorship to democracy, the fact that economic agencies as they fitted in with the Franco regime were insecure and that the governments over that period were weak and beset with internal contradictions and social pressures. The period was

best known for capital disappearing out of the country and a lack of confidence that brought with it a lack of investment on the part of Spanish businessmen.

- Many companies closed down and there was a shortage of salaried employment.
- The leading role of the democratic trade union syndicates UGT (*TR: Union General de Trabajadores = General Workers Union*) and CC.OO. (*TR: Comisiones Obreras = Workers Committees*) and the search for alternatives for workers at risk of losing their employment, pointed to the creation of SOCIEDADES LABORALES. A large number of trade union leaders became involved and generated confidence that led to groups of workers setting up SOCIEDADES LABORALES, becoming both business owners and employees of those businesses.
- UCD (*TR: Unión de Centro Democrático = Central Democratic Union*) governments made it possible for employees to access long term loans on favourable terms, for the purpose of creating employment by incorporating *SOCIEDADES LABORALES*. The first effective finance instrument allowing workers to become owners of the means of production was therefore put in place. (Article 129-2 of the 1978 Spanish Constitution).

3. Socialist Government, Law 15/1986 dated 25 April

The triumph of the first left wing government to win in democratic elections since February 1936 was a historical milestone, but even more so because it won with a majority vote that has never been repeated in all thirty years of Spanish democracy.
Nevertheless, another four years would pass before the task of providing a judicial charter to the thousand of worker companies that had taken up the judicial form of Spanish Public Limited Company (*Sociedad Anónima*) was accomplished in the form of a "sui generis" administrative classification governed by ministerial order and access to certain types of financial assistance. Over that period, however, the amounts set aside from budgets for the purpose of promoting *SOCIEDADES LABORALES* increased very significantly and the important task, both for the government and for the companies themselves, of preparing to set up a solid system of support for the reality of these companies that were already in place was carried out. Organisations were set up in Catalonia and in the Basque Region to represent SOCIEDADES LABORALES, although there was no all-inclusive countrywide organisation at that time. The other organisations came into being as a result of provisions set down under the 1986 Law. It wasn't until 4 July 1987 that *Confesal* itself came into existence.

4. White Paper of Companies Financial Sector in Spain

There was a need to identify and quantify the company formats that had arisen out of policies put in place to promote employment within an adverse economic scenario, such as the SOCIEDADES LABORALES and associated workers co-operatives and this was set down in the text for the "The White Paper of Companies Financial Sector in Spain". It contains two particularly important aspects:

- The different kinds of company giving both a quantitative and a qualitative analysis and an account of their economic import analysing key accounts.
- Recommendations to the public administrations and representative organisations which, insofar as the latter are concerned, were very clearly expressed with regard to the associated work co-operatives and *SOCIEDADES LABORALES* advising they be brought under one single judicial form. One of the consequences of this would later give rise to or lead to the incorporation of the Spanish Business Confederation for Company Sector of the Economy (CEPES).

The diagnoses and proposals contained in the white paper were very accurate and followed through to some extent, although the most ambitious aspects of centralising the competent official bodies that were dispersed between the central government ministries and improving co-ordination of the autonomous administrations remained largely unimplemented as desired. The promotion policies, however, made such a deep mark that they have continued to exist over time and have survived the full range of governments of quite different political hue.
It is important to note the special emphasis given in the White Paper with regard to "Law 19/1989 dated 25 July" to the partial reform and adaptation of trading company legislation to EEC directives" and, especially, through the Revised Text for Law governing Spanish Limited Companies, approved by Royal Legislative Decree 1564/1989 dated 22 December merits comment. Article 4 of the Revised Text sets down that company capital may not be less than 10 million pesetas (€60.101,21) and, although there was a transition period for pre-existing SAL[1] up until 31 December 1996, it is certainly true to say that any Spanish Limited Company (SAL) incorporated after that date is required to have a minimum amount of company capital of 10 million pesetas.
In view of the structure and size of Spanish Limited Companies which have been set up over the last few years, the new company capital minimum requirements will considerably slow down incorporation of new SALs." It therefore recommended that a process of judicial convergence between CTA[2] and SAL should take place which did not happen but remained as a vague suggestion that led to exacerbated rivalry between the directors of representative structures and a clear lack of viability. Even though the types of company and the financial structures are judicially similar, cooperatives have their roots in a movement going back over the century and with other factors involved that were strongly criticised in the White Paper. (Page 90, regarding the principles of cooperatives). The Spanish public limited companies (SAL) however, are based on more flexible company formats and combine the quality of shareholder with that of salaried employee in a more efficient form, with a more agile and understandable focus.

5. Law 19/1989 regarding adjustment to the European directive affects Spanish Workforce Owned Public Limited Company (SAL) slowing down their growth

The White Paper forecasts were correct and 1989 saw a 80% drop in companies registering as SAL with the trend continuing over the following years. Also, despite the fact that they do generate employment, the growth in SOCIEDADES LABORALES has slowed down considerably. The efforts of Confesal representatives prior to this regulation coming into force came to nothing. We thus reached the end of the period of Socialist government with no law in place to solve the evident problem that Spanish public limited SOCIEDADES LABORALES do not fit into the new judicial framework as a result of applying European directives to matters concerning this type of company.

6. Socialist Law Proposal 1996 (whilst in opposition)

The (right wing) Partido Popular won the 1986 elections with a relative majority. Whilst in opposition, the PSOE (Spanish Socialist Party) presented a whole range of proposals for legislation including a Law for SOCIEDADES LABORALES. All the proposals were rejected except for the last one, which was surprisingly approved by the Popular party parliamentary group. It therefore proceeded through parliament and came into force on 24 March 1997.

[1] SAL: Spanish Public Limited SOCIEDADES LABORALES *(Sociedad Anónima Laboral)*
[2] CTA: Associated Work Co-operative (*Cooperativa de Trabajo Asociado)*

Although if one considers the imperfections of a law proposed by the main opposition party, supported by the party in government and amended by them and also by the Catalan CiUn[3] party, it is easy to imagine the incoherent aspects and defects of the wording, the overall result was extraordinarily positive. The response came from the business entrepreneurs themselves, i.e. those who stood to benefit from the law. While in 1996 a total of 706 SOCIEDADES LABORALES were incorporated, the figure rose to 1,315 in 1997 and to 3,979 in 1998. The figure continued to increase over the following years and peaked in the year 2002 at 6,013 new companies.
Since 1996 the number of active worker companies constituted as SOCIEDADES LABORALES (*sociedad laboral)* has tripled in Spain, increasing by 15,000 new companies and doubling employment by creating 73,000 new positions.
At this point in time (30 June 2006) there are 20,341 companies in existence in Spain and they employ 130,055 workers. The fact that the two major political parties, PSOE and PP, both support SOCIEDADES LABORALES is a noteworthy point, because this has set the scene for a very productive development of this type of business entrepreneurship, combining ownership and profit share for the employees within one judicial structure. This novel and attractive means of creating employment in the Spanish and European business panorama has therefore been consolidated.

7. What part do SOCIEDADES LABORALES play in the Spanish business entrepreneur panorama?

Looking at the data available as at 31 December 2005 as a basis for comparisons, then:

- There are 20,279 SOCIEDADES LABORALES. The Spanish Central Business Directory (DIRCE)[4] shows that 3,174,393 companies are active of which 675,762 (21.29%) have more than two salaried workers. SOCIEDADES LABORALES therefore represent 3% of the latter.
- In 2005 there was an increase of 3.6% in the number of active companies (according to the DIRCE) and 4.6% in SOCIEDADES LABORALES. (MTAS).
- Employment generated by *SOCIEDADES LABORALES* in 2005 increased by 7.5%; (6.6% in 2004, with an increase of 8.0% in 2003; 8.4% in 2002; 9.6% in 2001). This generated 8,794 new jobs (7,256 in 2004, 8,821 in 2003, 7,796 in 2002; 8,109 in 2001). That figure implies that, in relative terms, the growth rate for employment in *SOCIEDADES LABORALES* is twice the general rate of the (Spanish) economy: 3.1% (with 548,000 new employees).
- In general terms 125,646 people are employed in *SOCIEDADES LABORALES* in, representing 0.81%[5] of the entire working salaried population of 15,502,100 people and amounting to 0.99% of 12,637,900 salaried workers in the private sector.
- During the second half of 1990, the White Paper recorded business turnover which it estimated at 2.194 billion Euros (365.039 billion Pesetas). According to tax authorities data provided by the Director General for company Finance the figure for the year 2003 was 8.6 billion Euros. Given that employment that year stood at 109,596 workers, then the average sales per employee and per year are €78,470 (13,056,312 Pesetas). In 1990 that figure was €42,070.85 (7 million Pesetas).
- The growth rate for employment in *SOCIEDADES LABORALES* is 4.4 percentage points higher than that of the Spanish economy, even though in absolute figures this represents 1.6% of the net increase in employment in 2005 (2.05% in 2004). The

[3] Convergència i Unió
[4] Directorio Central de Empresas = Central Business Directory
[5] (in 2004 with 116,852 people this is 0.79% of 14,720,800 people on salaries)

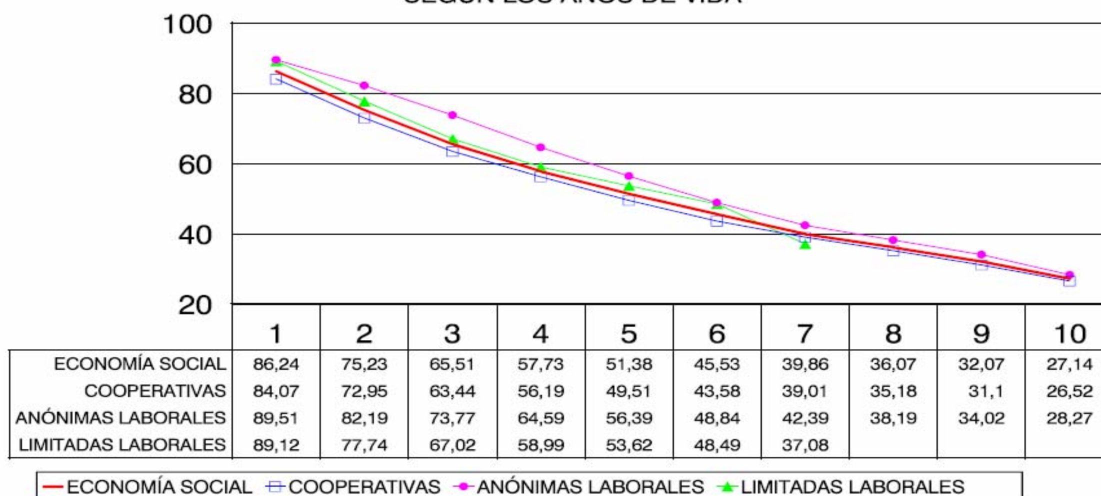
increase in employment in *SOCIEDADES LABORALES* amounted to 3.04% of employment created by the Spanish economy in 2003, 3.8% in 2002; 2.2% in 2001; 1.94% in 2000, 1.86% and 1.59% in 1999 and 1998 respectively.

- The percentage participation in net creation of employment fell in 2005 by 0.45 of a point with regard to the previous year. Whenever there is an accelerated increase in job creation, then the contribution to job creation of *SOCIEDADES LABORALES* within the overall economy either remains the same or decreases, whereas it increases if there is a slowdown.
- *SOCIEDADES LABORALES* added to the employment rate by 5.15 people per one thousand employees (EPA) in 1999 and by 6.62 in 2005 (28.54%.)
- Co-operatives increased by 5,164 employees in 2005, i.e. by 1.7% and *SOCIEDADES LABORALES* by 8,794 net number of employees (7.5%). Employment generated by the existing *SOCIEDADES LABORALES* was 70% higher than for all co-operatives as a whole.
- Longevity. According to report (5/2005) entitled "The Process of Business Creation and entrepreneur dynamics" produced by the Spanish Business Economy Section (*Consejo Económico Social de España (CES)*),*SOCIEDADES LABORALES* surpassed companies in general by 12 percentage points for business survival rate, in the third year since they came into existence.

Spain **Business survival**	**Trading companies**	**Workforce Owned Public Limited Comp.**	**Co-operatives**	**Workforce Owned Comp —Businesses**
NUMBER OF COMPANIES started in 1998	100%	100%	100%	
Survival rate Year 1	**82,9%**	**89,5%**	**84,1%**	***6,6%***
Survival rate Year 2	**69,3%**	**82,2%**	**73,0%**	***12,9%***
Survival rate Year 3	**61,6%**	**73,8%**	**63,4%**	***12,2%***

Source: Consejo Económico Social (Business Economy Council)

- Research carried out by the General Directorate for Business Economy at MTAS along the same lines showed that there is a higher than average survival rate for *SOCIEDADES LABORALES* compared to Business Economy Sector as a whole.



	1	2	3	4	5	6	7	8	9	10
ECONOMÍA SOCIAL	86,24	75,23	65,51	57,73	51,38	45,53	39,86	36,07	32,07	27,14
COOPERATIVAS	84,07	72,95	63,44	56,19	49,51	43,58	39,01	35,18	31,1	26,52
ANÓNIMAS LABORALES	89,51	82,19	73,77	64,59	56,39	48,84	42,39	38,19	34,02	28,27
LIMITADAS LABORALES	89,12	77,74	67,02	58,99	53,62	48,49	37,08			

WHY THE LAW NEEDS TO BE CHANGED

The 1997 Law served as a powerful kickstart to business entrepreneur dynamism and to job creation, as highlighted in the CES report and reflected in the official statistics with regard to how this has evolved. There are nevertheless aspects of the regulation which after almost 10 years of being in force could and should be improved upon.
Just as occurred in 1989, adapting to the European directive for Public Limited Companies and the law which was subsequently passed regarding Limited Liability Partnerships, meant that the 1986 Law regarding Public Limited SOCIEDADES LABORALES is quite out of date. Along parallel lines to some extent, it is now evident that there is a need for an updated regulation, in accordance with legislative changes both in employment related matters, to do with changes to the working sector and with the Statute governing Self Employed Workers, as well as business sector developments such as new regulations under the Law for New Company Limited Partnerships (LSLNE), which have a very direct effect on SOCIEDADES LABORALES. All this, furthermore, within the framework of European policies to provide support for the entrepreneurial spirit, job creation, SMEs[6], transferring companies over to the salaried workers and promoting corporative social responsibility.
The model of a company mainly owned by the employees, of which the *SOCIEDADES LABORALES* are an advanced example, is starting to show up errors as it is currently regulated. There are contradictions and technical judicial defects that can be corrected and which, if they are resolved, could lead to another wave of business start ups, even stronger than we have seen over the last ten years.
One of the results of the above mentioned defects is the fact that the statistics do not reflect the business reality generated by the *SOCIEDADES LABORALES* in all its aspects. This is because, as a result of the inadequate restrictions which the current law imposes, there have been a substantial number of *SOCIEDADES LABORALES* that have lost their classification unintentionally. Although the workers continue to hold shares in these companies, they have become Public limited companies or limited partnerships and are no longer classified as "*workforce owned*".

These changes to the Law are proposed for the following reasons:

- To increase the usefulness of the *SOCIEDADES LABORALES* and make them more attractive for business entrepreneurs as a judicial company format for their business project.
- For this to be a valid business option both in times of economic crisis and boom.
- In order to set down the successful results of policies that promote self-employed working, as this evolves into company form, by providing an owned business option within company financial formats.
- Provide coherent promotion of entrepreneurial spirit based on employee ownership in small and medium sized firms and incentives to make that effective. The most appropriate judicial formats for this are the *SOCIEDADES LABORALES.* The reasons for this are based on their obvious quantified, and also qualified, success resting on the principles and policies that have arisen out of the European Union.

The proposal suggests the following in order to achieve those objectives:

[6] SME = Small and Medium sized business or PYMEs in Spanish

- The creation of an effective mechanism to allow long term workers on indefinite period contracts to become shareholders, which, while unbelievable, has not been provided for with the necessary foresight under the current regulation.
- The mechanisms put forward are based on “objective incentive” to encourage maintaining and increasing the number of shareholder employees. The new regulation, therefore, sweeps aside the inefficient and unsuccessful restrictions on contracting employees on indefinite duration contracts that are based on administrative loss of classification. Those restrictions merely serve to draw attention away from the true objective which is the inclusion of employees as shareholders by facilitating acquisition of shares or company holdings with assistance and incentives to ensure that this is both possible and sustainable.
- The proposal also sets out tax incentives, in line with already approved EU criteria, based on a studied balance between tax advantages and consolidation of company financial autonomy. This encourages investment in production by reinvestment of profits and, at a higher level of social commitment, constitutes “share acquisition schemes” aimed at non-shareholder employees, with the aim of encouraging involvement in the company.

CONCLUSIONS

- This is a regulation which consolidates for the future the already proven success of a modern model for company ownership by employees, integrated with the most innovative and advanced trends of participative and democratic company ownership and management based on recommendations and directives issued by the European Union.
- The studied balance between tax incentives, quite unconnected with the idea of state aid, creates a viable favourable application of tax in exchange for profit re-investment countermeasures and giving up part of those profits for the purpose of achieving company aims intended to facilitate employees on indefinite period contracts becoming shareholders.
- The regulation enhances the stable and non-opportunistic nature of *SOCIEDADES LABORALES* (in crisis situations), providing further objective elements to prevent inappropriate use of this business model.
- A mechanism providing an incentive for employee savings is included by means of a “company savings account”[7], used to acquire shares or holdings in the company for which they work.

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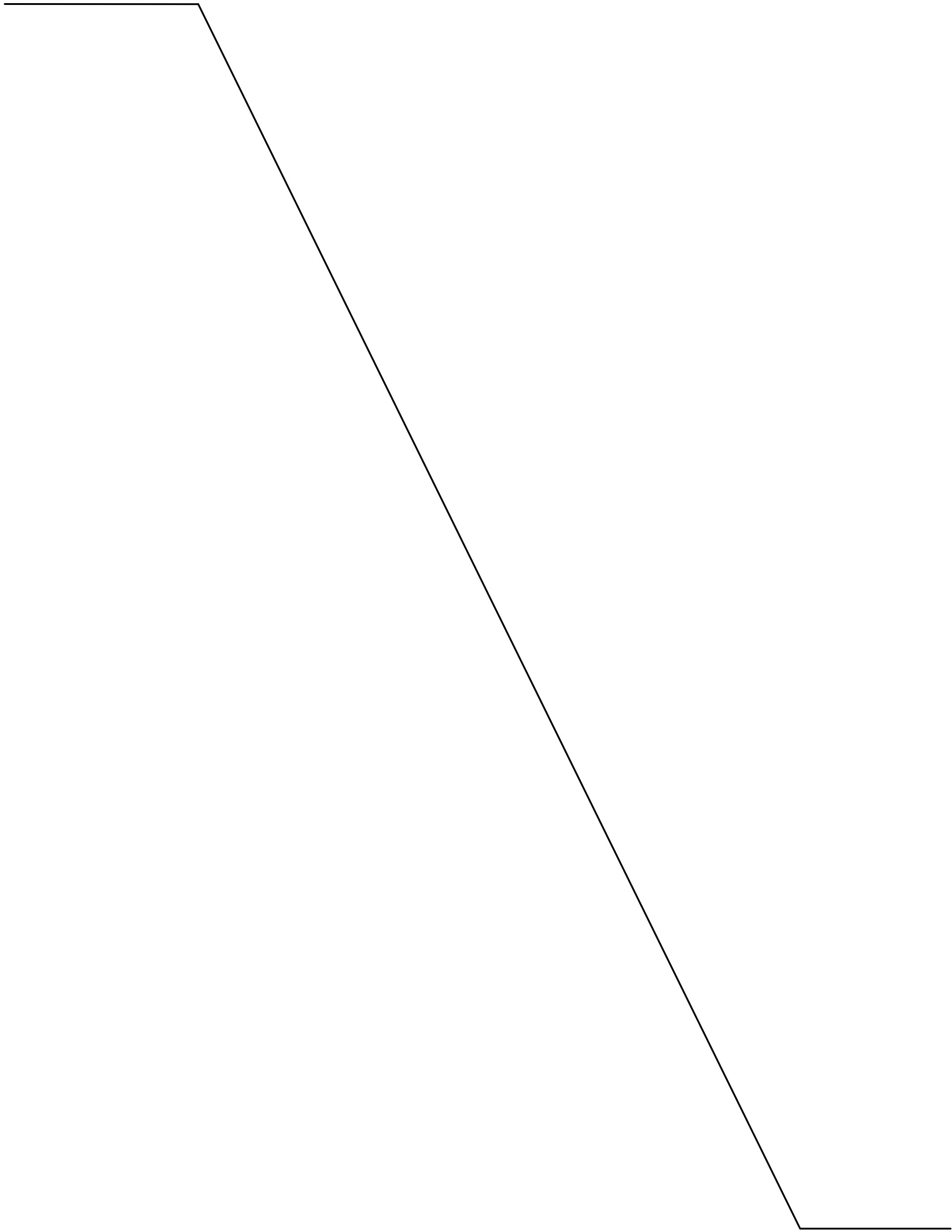
[7] already used for New Company Limited Partnerships (*Sociedad Limitada Nueva Empresa*) , and introduced by Decree-Law 2/2003, dated 25 April, regarding economy reform measures.



ANNEX WITH DATA *SOCIEDADES LABORALES* IN SPAIN

OFFICIAL STATISTICS

(Ministry for Work and Companies)

(Confesal: own draft)

TRENDS OF COOPERATIVES AND SOCIEDADES LABORALES																		
	1996	%	1998	%	1999	%	2000	%	2001	%	2002	%	2003	%	2004	%	2005	%
TOTAL COMPANIES	25.710	100%	29.234	100%	32.184	100%	35.269	100%	38.669	100%	42.191	100%	43.314	100%	44.747	100%	46.425	100%
Cooperatives	20.401	79%	22.155	76%	22.548	70%	23.334	66%	24.351	63%	25.336	60%	24.907	58%	25.354	57%	26.146	56%
W.O.C.	5.309	21%	7.079	24%	9.620	30%	11.935	34%	14.318	37%	16.855	40%	18.407	42%	19.393	43%	20.279	44%
Public Limited	5.309	21%	4.867	17%	4.560	14%	4.195	12%	3.798	10%	3.494	8%	3.180	7%	2.885	6%	2.735	6%
Limited liability partnerships	0	0%	2.212	8%	7.718	16%	7.781	22%	10.520	27%	13.361	32%	15.227	35%	16.508	37%	17.544	38%

TRENDS OF COOPERATIVES AND SOCIEDADES LABORALES																		
	1996	%	1998	%	1999	%	2000	%	2001	%	2002	%	2003	%	2004	%	2005	%
TOTAL EMPLOYEES	267.334	100%	307.278	100%	335.363	100%	353.933	100%	370.364	100%	385.450	100%	429.351	100%	425.600	100%	439.618	100%
Cooperatives	214.477	80%	244.711	80%	259.757	77%	269.063	76%	277.385	75%	284.675	74%	319.755	74%	308.808	73%	313.972	71%
W.O.C.	52.857	20%	62.567	20%	75.606	23%	84.870	24%	92.979	25%	100.775	26%	109.596	26%	116.852	27%	125.646	29%
Public Limited	52.857	20%	53.993	18%	54.798	16%	51.971	15%	48.485	13%	44.105	11%	41.489	10%	38.207	9%	37.811	9%

Limited liability partnerships	0	0%	8.574	3%	20.808	6%	32.899	9%	44.494	12%	56.670	15%	68.107	16%	78.645	18%	87.835	20%

Data as at 31st December each year.

YEAR-ON-YEAR VARIATIONS

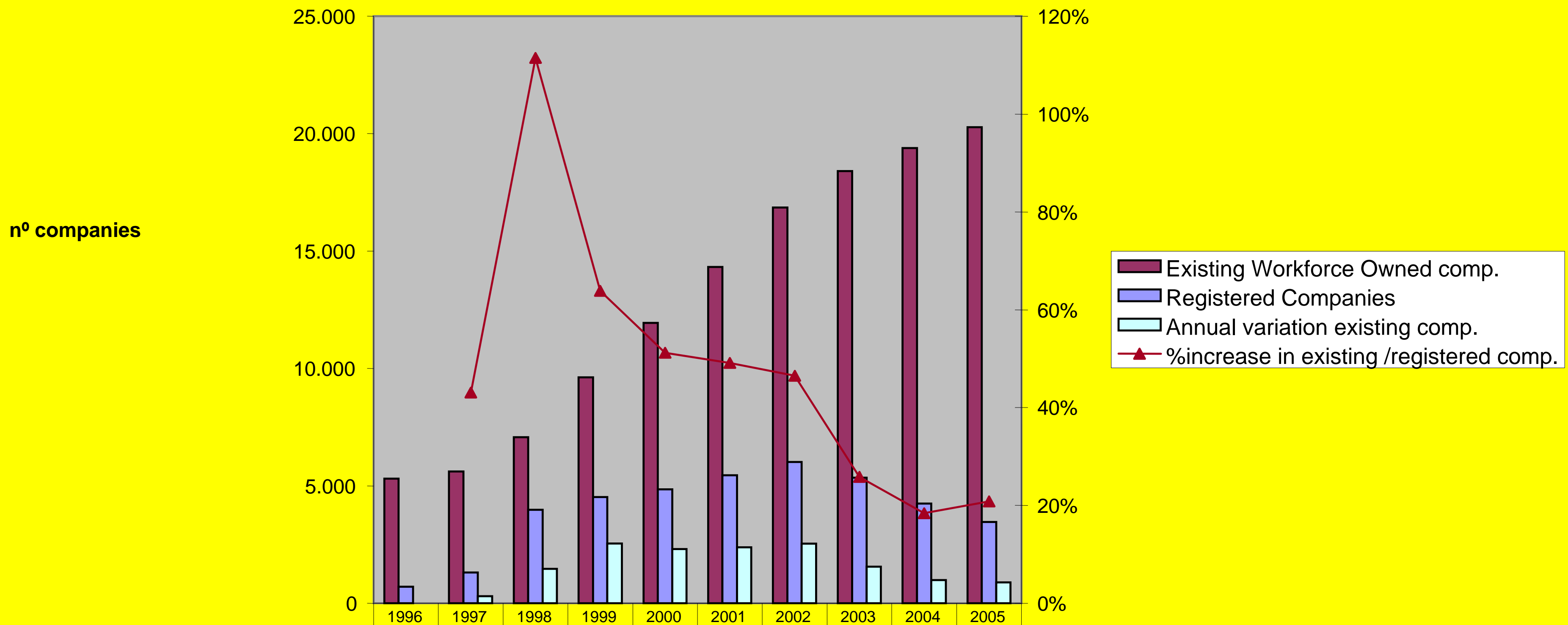
	1997-1996	% Variations	1998-1997	% Variations	1999-1998	% Variations	2000-1999	% Variations	2001-2000	% Variations	2002-2001	% Variations	2003-2002	% Variations	2004-2003	% Variations	2005-2004	% Variati
TOTAL COMPANIES	1.434	5,6%	2.090	7,7%	2.950	10,1%	3.085	9,6%	3.400	9,6%	3.522	9,1%	1.123	2,6%	1.433	3,3%	1.678	3,7%
Co-operatives	1.130	5,5%	624	2,9%	409	1,8%	770	3,4%	1.017	4,4%	985	4,0%	-429	-1,7%	447	1,8%	792	3,1%
Workforce Owned	304	5,7%	1.466	26,1%	2.541	35,9%	2.315	24,1%	2.383	20,0%	2.537	17,7%	1.552	8,4%	986	5,4%	886	4,6%
Public Limited	-160	-3,0%	-282	-5,5%	-307	-6,3%	-406	-8,9%	-356	-8,6%	-304	-8,0%	-314	-9,9%	-295	-9,3%	-150	-5,5%
Limited Liability Partnerships	464		1.748	376,7%	2.848	128,8%	2.721	53,8%	2.739	35,2%	2.841	27,0%	1.866	12,3%	1.281	8,4%	1.036	6,3%

YEAR-ON-YEAR VARIATIONS

	1997-1996	% Variations	1998-1997	% Variations	1999-1998	% Variations	2000-1999	% Variations	2001-2000	% Variations	2002-2001	% Variations	2003-2002	% Variación	2004-2003	% Variations	2005-2004	% Variati
TOTAL EMPLOYEES	16.058	6,0%	23.886	8,4%	28.085	9,1%	18.570	5,5%	16.431	4,6%	15.086	4,1%	43.901	10,2%	-3.691	-0,9%	13.958	3,3%
Co-operatives	13.132	6,1%	17.102	7,5%	15.046	6,1%	9.306	3,6%	8.322	3,1%	7.290	2,6%	35.080	11,0%	-10.947	-3,4%	5.164	1,7%
Workforce Owned	2.926	5,5%	6.784	12,2%	13.039	20,8%	9.264	12,3%	8.109	9,6%	7.796	8,4%	8.821	8,0%	7.256	6,6%	8.794	7,5%
Public Limited	1.119	2,1%	17	0,0%	805	1,5%	-2.827	-5,2%	-3.486	-6,7%	-4.380	-9,0%	-2.616	-6,3%	-3.282	-7,9%	-396	-1,0%
Limited Liability Partnerships	1.807		6.767	374,5%	12.234	142,7%	12.091	58,1%	11.595	35,2%	12.176	27,4%	11.437	16,8%	10.538	15,5%	9.190	11,7%

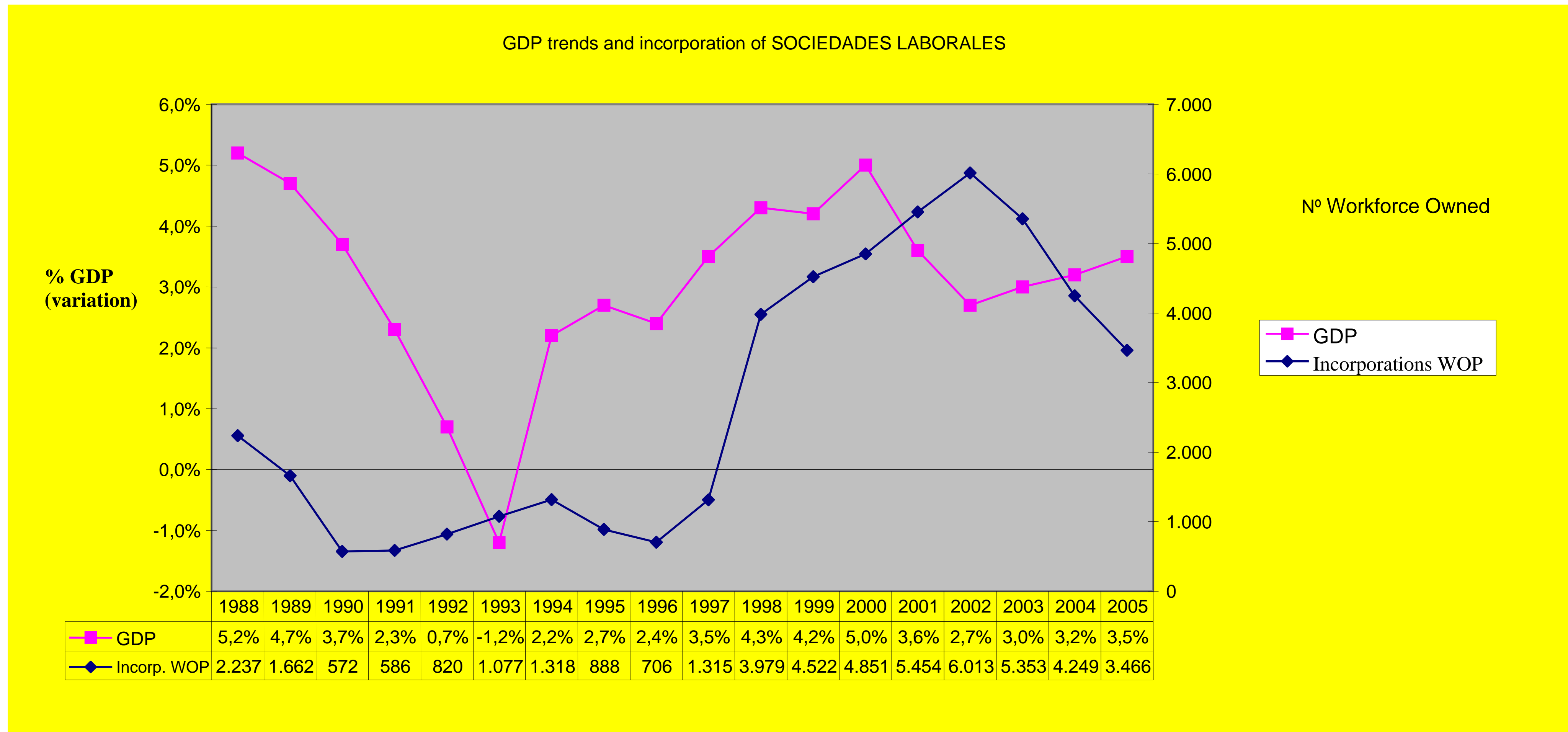
Data as at 31 December each year

Source	Social Security contributions codes on file and for self employed signed up to Social Security	Ministerio de Trabajo y Asuntos Sociales
Prepared by	General Headquarters for Promotion of Company Sector of the Economy and the European Companies Fund	Confesal



	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Existing Workforce Owned comp.	5.309	5.613	7.079	9.620	11.935	14.318	16.855	18.407	19.393	20.279
Registered Companies	706	1.315	3.979	4.522	4.851	5.454	6.013	5.353	4.249	3.466
Annual variation existing companies		304	1.466	2.541	2.315	2.383	2.537	1.552	986	886
%increase in existing /registered comp.		43,1%	111,5%	63,9%	51,2%	49,1%	46,5%	25,8%	18,4%	20,9%

(*) Line of triangles: %Increase of *Worker Owned Companies* in existence compared to those registered the previous year



	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
GDP	5,2%	4,7%	3,7%	2,3%	0,7%	-1,2%	2,2%	2,7%	2,4%	3,5%	4,3%	4,2%	5,0%	3,6%	2,7%	3,0%	3,2%	3,5%
Incorp. WOP	2.237	1.662	572	586	820	1.077	1.318	888	706	1.315	3.979	4.522	4.851	5.454	6.013	5.353	4.249	3.466

Year SPAIN	2005 medium size	2004 medium size	variation	% variation	rate SAL/SLL
Workforce Owned Companies	13,82	13,24	0,58	4,39%	2,76
Public Limited Comp.	5,01	4,76	0,24	5,09%	
total	6,20	6,03	0,17	2,83%	

Comments on the above tables:

I. Development of Co-operatives and *SOCIEDADES LABORALES*

   a. Charts the development in the number of active companies and in terms of employment in the entrepreneur companies sector with regard to company finance in general, i.e. the Co-operatives overall (agricultural, associated labour force, end client, transport, training….etc.) and *SOCIEDADES LABORALES* broken down into the two specialist areas of *Workforce Owned* Public Limited *Companies (S.A.L.)* Limited *Liability Workforce Owned* Partnerships *(S.L.L.)*
   b. Follows the development of the relative weight of each judicial type and one can see a greater number of *SOCIEDADES LABORALES* now account for 44% of companies overall compared to 21% previously. They increased by some 23 percentage points over 9 years of companies in business overall.
   c. Employment in *SOCIEDADES LABORALES* rose by nine percentage points, from 20% to 29% from 1996 to 2005.

II. Inter-annual variations for Co-operatives and Worker Owned Companies.
   a. The dynamic growth in the number of active companies is clearly greater among *SOCIEDADES LABORALES* after the 1997 law, and subsequent laws, came into force.
   b. A period of intensified job creation followed the first full financial year after the 1997 Law came into force i.e. in 1998.
   c. Growth rates, for both numbers of companies and for job creation, are significantly higher than those for co-operatives as a whole, and therefore the general balance sheet for that period shows a very dynamic trend and also shows that the entrepreneurs prefer *Workforce Owned Limited Liability Partnerships* over other judicial forms of company financial structures.

III. A comparison between the numbers of existing (active) *SOCIEDADES LABORALES* and those that are set up on a yearly basis (entered on the MTAS administrative register and the Companies Register.)
   a. *SOCIEDADES LABORALES* show excellent balance sheet results for the business entrepreneur sector and wealth and employment generation, but they are actually more successful than the statistics show. What leads one to make that kind of statement?
   b. The need to tackle the proposed Law reform arises, partly, out of a reflective analysis of this table. What can we learn by comparing existing companies with those that are incorporated or start up in any given year?
      i. Each year a certain number of *SOCIEDADES LABORALES* are incorporated, and this demonstrates the extent to which this legal form is used by entrepreneurs The number of companies incorporated has risen from 706 incorporated in 1996 to 3,466 in 2005, reaching a peak of 6.013 companies in 2002.
      ii. At the same time, a net inter-annual variation arises as a result of the new start ups involved, having taken into consideration the removal of any companies which have ceased trading.
      iii. The line of triangles which measures, in percentage terms, the variation in the number of companies in existence with regard to

the variation in the number of companies registered during the previous year, creates an indicator which can be used to interpret the evolution and the reasons why this is so and not otherwise.

iv. 706 new companies were registered in 1996 while the census showing active companies increased by 304. This means that 43.1% of those companies remained active and fed the net growth which occurred in 1997. What happened to the other 56.9% (402 companies)?
    1. Failure level estimated at 25%, taking as a reference the rate of companies no longer on the survival table drawn up by MTAS that calculates the percentage of *limited liability workforce owned partnerships* that cease trading during Year 1 to be 10. 8%, during Year 2 at 22.26% and Year 3 at 32.98%
    2. Of the remaining 31.9%, one can infer that these are companies which lost their classification unintentionally, given that the Companies Register analysis shows that most of them are still active.
    3. Loss of classification as detected in practice is for the following reasons:
        a. either exceeding the limits in place for contracting long term workers on indefinite period contracts or the likelihood of exceeding those limits, due to:
            i. the employee not wishing to become a shareholder, because of lack of finances, or because they do not wish to take on entrepreneurial risk.
        b. unavailability of company shares or holdings for new shareholders
        c. the company being unwilling to include new shareholders, on several grounds: absolute refusal to allow additional shareholders, or because it considers that if they are to become shareholders then they should do so by acquiring a share package requiring a high capital investment.

v. The graph curve tendency shows that the net increase in companies in existence changes from representing 43.1% of companies incorporated in the previous financial year in 1997 to 20.9% in 2005 and reached a peak in 1998 of 111.5%. This means that the relationship between the number of registered companies and the increases in already existing companies is weaker. In other words, more and more companies are losing their classification in relation to new companies starting up in the previous financial year. This fact, furthermore, contradicts the way that the Spanish economy has been evolving and indicators for company profits as published by the Spanish National Bank department for company returns.

vi. We can see from the tables showing the progress of *SOCIEDADES LABORALES*, for the period between 1996 to 2005, that there was a net increase of 14,970 new active

companies i.e. a net increase of 282% and 72,789 new jobs comprising a 137.7% net increase. Nevertheless, one should seriously consider that by eliminating the noted defects in the current law, that outcome, although it is already good, would be exceptionally positive.

vii.

IV. GDP Trends with regard to *SOCIEDADES LABORALES* incorporations

a. It is interesting to track the comparative trends of these two major items because these show a very interesting path followed by employment and company initiatives policies.

b. It is worth differentiating several of the phases within the timespan analysed between 1988 (when the law came fully into force) and 2005.

i. 1988 to1990. There was a substantial decrease in the number of *workforce owned company* incorporations which came about as a result of adapting Spanish trading company legislation for public limited companies (*sociedades anónimas*) to the European directive. This had a considerable impact, reaching an all time low of 502 new companies in 1990, barely 22% of the number incorporated just two years previously, in 1988.

ii. 1991 to 1996. The number of companies picked up as a result of the fall in GDP which had a negative effect on employment. We can observe the fact that *SOCIEDADES LABORALES* work on an opposite cycle, as an instrument for job creation when the economy is unfavourable overall. The numbers increased to1994 and then decreased again in 1995 when GDP picked up.

iii. From1997 to 2002, Law 4/1997 date 24 March produced the desired effect but with a totally unexpected force. Spanish public limited companies (SAL) had been "displaced" within the judicial company framework, because adaptation to the European directive meant that the 'Spanish public limited company' type *(sociedad anonima)* was intended as a judicial format for small and medium sized companies. S.A.L., however, are mainly small and micro companies, and therefore, as the 1997 Law also governed SAL, the company form of *limited liability partnership* (SLL) became successful among business entrepreneurs.

iv. The impact of the workforce reform brought in by the (right-wing) Partido Popular took place between 2003 and 2005. That reform eliminated the one-off unemployment payment as an element assisting the unemployed in becoming shareholder employees in *SOCIEDADES LABORALES*, and CTA[8]. This was finally rectified and the instrument for encouraging employment and integrating in this type of company was retained. At the same time there was increased promotion of self-employed work which took the form of partial access to one-off unemployment benefit, as well as other additional types of assistance and advantages for becoming a self-employed worker. These two circumstances, as shown by the figures, led to the creation of *SOCIEDADES LABORALES*. The most important, however, is a current issue

[8] CTA: Work Associated Co-operatives

and refers to the impact that the *worker owned company* reform has had on temporary employment. There is a high level of contracting employees on specific time period contracts within *SOCIEDADES LABORALES.* We have already mentioned that the existence of restrictions on contracting long term employees on indefinite period contracts in *SOCIEDADES LABORALES,* far from providing an incentive for them to become shareholders, (and in that the 1997 law does not provide any more efficient mechanisms) has actually meant that there has been a quite unexpected increase in temporary work contracts, so much so that among Spanish companies sector of the economy as a whole these account for 35.1% two points above the general rate (33%). For SAL this stands at 32.7% and for SLL it is as high as 51.5%. This situation, while perfectly legal, (temporary employees are not included for the purposes of calculating the limits set down in law) is, however, undesireable. When these amendments are applied to *SOCIEDADES LABORALES* many employees on temporary contracts will convert to being long term employees on indefinite period contracts and this will have a serious impact because legal mechanisms for incorporating new shareholders have many defects as they stand in the current law.

v. Changes to the 1197 are therefore convenient, necessary and urgent.

V. *Spanish Public Limited SOCIEDADES LABORALES* (SAL) are small on average and *Workforce Owned Limited Liability Partnerships* (SLL) can be considered to be micro companies.

a. The average size of these companies is seen to be increasing in that while fewer companies are being incorporated they actually create more jobs and existing companies, as they grow, provide an increasing number of jobs.

PROPOSED CHANGES TO THE LAW GOVERNING SOCIEDADES LABORALES 4/1997.

Dr. Gemma Fajardo García
Prof. TU Mercantile Law
Valencia University
Company Regime

Mª Pilar Alguacil Marí
Prof. TU Financial Law
Valencia University
Tax Regime

Juan López Gandía
University Chair Work and Social Security Law
Valencia Polytechnic University
Participation in the Social Security

Law 7/2003, dated 1 April (BOE 79, dated 2 April) governing New Company Limited Partnership (*Sociedad Limitada Nueva Empresa*) when it was passed effectively amended the regime of limited partnership companies by allowing non-voting shareholders and permitting companies to temporarily acquire and own holdings in their own company. This means that the Law regarding *SOCIEDADES LABORALES* also has to be changed.

One should take advantage of this fact in order to correct and improve a law which, although it has only been in force since March 1997, partly reproduced some of the defects found in the first 1986 law governing *SOCIEDADES LABORALES* and others that have come to light both in doctrine and in practice, since it has been applicable.

When it comes to considering amendments to a law such as that governing SOCIEDADES LABORALES one needs to be quite clear as to which characteristics are essential to the definition of this type of company and which, therefore, should be preserved and, if possible, secured. One must also consider which other matters require regulation in law or whether they would be better regulated by the company itself.

An analysis of legislation since the Ministerial Order dated 6 February 1971 means that we can say that the essential points of these companies are: that employees

on permanent contracts should be able to become shareholders and that the company should be governed by the body of workers as a whole.

In order to preserve these characteristics the Legislator makes a series of judicial mechanisms available to *SOCIEDADES LABORALES*, such as the right to preferential acquisition, preferential rights in capital increases, reserve funds which may not be shared out and which allow shareholders to join and to leave, restrictions on the number of non-shareholder employees, restrictions on how many company shares can be held by non-employees and by individually assessed shareholders, etc.

When the Legislator passed Law 4/1997 dated 24 March governing *SOCIEDADES LABORALES* he included among other grounds *"the key lines of the principles on which SOCIEDADES LABORALES are based",* while at the same time confusing basic characteristics with legal instruments made available to shareholders in order to achieve and secure those characteristics. Thus he stated that *"The new regulation adheres to the key lines of principles on which SOCIEDADES LABORALES are based including, particularly: that the majority of company capital should be owned by employee shareholders as a whole who personally and directly render paid service within the company and who are on long term contracts for indefinite periods; establishing a limit to the maximum amount that any one shareholder may own; the existence of two types of shares or holding dependant on whether or not the owners thereof are company employees; preferential right of acquisition for transference of worker type shares or holdings; setting up a special reserve fund for the purpose of making good any losses incurred. These are all key points which, together with the tax benefits, contribute to promoting and developing this type of company".*

Not all of the points set out above are actually key points. Those that might be deemed to be key are that the majority of company capital must be owned by those employees overall and the maximum amount set down that any one shareholder may own. Even these points, however, are incorrect and incomplete. They are incorrect in that the important point is not that the shareholders collective should own most of the company capital, but rather that they should control the company. Those two circumstances are not always one and the same. It is incomplete because the most

relevant point for incorporation as this type of company has been missed out: that employees must be able to become shareholders in the company.

The others as we have said, are not key points but rather judicial mechanisms in order to make the previous points possible. These mechanisms should, therefore, be reviewed in order to see whether or not they are adequate and sufficient in order to achieve the purposes for which they were intended.

JUSTIFICATION FOR A SPECIAL RESERVE FUND.-

Some of these mechanisms have disappeared over time such as a reserve fund that may not be shared out. This reserve fund permitted a reduced cost of share acquisition or reimbursement (75% of the actual price) and this facilitated the shareholder either joining or leaving as an investor. Law 1997 meant that it was not longer impossible to pay out the reserve fund amount and that it remained as an additional reserve fund serving to guarantee company solvency but which does not, however fulfil the purpose for which it was originally instituted (similar to the purpose in its time of the workforce foundation “Fultuv” or that currently accomplished by the compulsory reserve fund for co-operatives). The set aside amount to this reserve fund is not a key point for *SOCIEDADES LABORALES* and, as a judicial mechanism, it no longer fulfils the purpose for which it was set up. Therefore, at this point in time, the fact that failure to set this aside leads to a loss of classification as a workforce owned company is not only no longer necessary but is, furthermore, absurd.

This reserve fund, if it is kept in existence, should basically serve to accomplish the purposes of work force ownership of the company, i.e. it should facilitate employees becoming shareholders.

Other mechanisms should be reviewed, such as the mechanism restricting the number of employees who are not shareholders, the maximum limit for the amount of capital which certain shareholders may own and preferential share or holdings acquisition rights.

RESTRICTION ON THE NUMBER OF NON-SHAREHOLDER EMPLOYEES.-

Setting a maximum limit according to the long term employees on indefinite period contracts as a whole who are not shareholders is a measure that forces employees to become shareholders, under threat of the company losing its classification. This might even involve paying back any tax benefits received (Article 16.4). It can therefore be said to be a mechanism that ought to enable employees to become shareholders. However, the application of this regulation can lead either to an excessive number of temporary workers or to an unintentional loss of classification, in that for employees to become shareholders depends not only on the will of the employee and of the company, but on many other factors as well.

In order for employees to become shareholders in the *workforce owned company* they should be able to own some share or holding in that company if they were not already shareholders at the time the company was incorporated. They must be able, then, to become shareholders and to acquire some share or holding when these are disposed of, or, in the event of an increase in capital, to subscribe to shares or take over holdings in that company capital. It is not only the will of the employee, however, which will determine whether he or she can become a shareholder and even when they do desire to do so this is not always possible. Many factors have to coincide for this to be possible. Let us consider some of these factors:

A) In order to become a shareholder by acquiring shares or holdings *intervivos*, these must be available for acquisition by the non-shareholder employee to acquire in the first place. Shares and holdings only become available:

Whenever a shareholder is either prepared to transfer shares or holdings that he or she holds in the *workforce owned company* to permanent company employees who are not shareholders or whenever they wish to transfer their shares or holdings to anyone who is not a company employee, because in the latter case the law sets down a preferential right of acquisition in favour of the employees. If, on the other hand, the transfer has been agreed in favour of a shareholder employee, then those shares or holdings are no longer available for any employees who are not shareholders. Such an employee can only acquire those shares or holdings in the event that the person

transferring them decides not to transfer them to another shareholder employee. This leads one to question on this point: Should a shareholder be obliged to assign his or her shares or holdings in favour of an employee who is not a shareholder? The law does not allow this and as it is not even possible as a statutory option, the system provided for under Article 7 is necessary. The only possibility, as set out above, is when a shareholder ceases to work for the company. In that event, Article 10 requires the shareholder concerned to offer the shares or holdings that he/she owns to be acquired in accordance with the provisions of Article 7. This principle does not clearly state whether or not this shareholder who no longer works for the company may agree to transfer his or her shares or holdings to a shareholder employee, as provided for under Article 7.1 or whether he or she must necessarily first offer them to long term employees on indefinite period contracts who are not shareholders. Even if the latter is the correct interpretation – which we believe it is – there is nothing to prevent that employee shareholder, prior to leaving the company, from transferring his or her shares or holdings in favour of other remaining shareholder employees and this means that the possibility they could be acquired by employees who are not shareholders effectively disappears.

Article 7.8 does not set out any acquisition right for non-shareholder employees with regard to the transfer of general shares or holdings, or at least, the law is not clear on this point. What is certain is that the bearer of those shares or holdings is not permitted to assign them to any employee who is not already a shareholder, and the preferential acquisition right set down under this law excludes any employees who are not shareholders, because – as it states - "the administrative body will commence notification procedures by notifying employee shareholders".

It would be a different matter if the company itself owned its own shares or holdings. A *workforce owned company* may not be the first owner of its own shares or holdings, i.e. arising out of an increase in company capital. Neither does Article 15 allow it, in that any shares or holdings not subscribed by the partners will be made available, as provided for under Article 7, but only to employees, whether or not they are shareholders. Nor is it possible in view of legislation governing Spanish Limited Companies (Article 74.1) and that governing Limited Liability Partnerships (Article 39.1). A company may, however, acquire these as deriving from its own shares or

holdings, under various circumstances. The Law governing Spanish Limited Companies LSL sets out several scenarios where this is possible:

- in the case of transfer *intervivos* of either worker class (Article 7.6) or general class (Article 7.8) shares and holdings, if nobody exercises their preferential right to acquisition then the company may exercise its right.
- in the event of a compulsory transfer due to termination of the employee relationship, then the company may acquire the shares or holdings belonging to the shareholder who no longer works for the company (Article 10), whenever these have not been acquired by persons having a preferential right to acquire them.
- the company may, on the death of a shareholder employee, acquire any shares or holdings belonging to that person if these have not already been acquired by someone who has a preferential right (Article 11.2), as long as the company Articles of Association set down that restriction to free transfer as stated under Article 11. 1.

Further instances of derived acquisition can be added to the examples given above as set down in the legislation regarding Spanish limited company and limited liability partnerships:

- A workforce owned company may freely acquire any shares or holdings that form part of an estate acquired under universal title, or acquired under free title or as a consequence of a judicial settlement for the purpose of settling a debt owed to the company by the holder thereof (Articles 40.1 to LSRL and 77 LSA).
- *Workforce Owned Limited Liability Partnerships* –which are a closed form of company – will also be able to freely acquire holdings in the company itself. In the event that an embargo is placed on company holdings then these can be offered in subrogation instead of either the person claimed against or, where appropriate, the creditor, under the conditions set out under Article 31.3 LSRL.
- When authorised by the Company Board of Directors, the company will be able to acquire its own shares or holdings under several circumstances. In these cases, the regulation set down under the law governing Spanish Limited Companies (*sociedades anónimas)* is not the

same as for Limited Liability Partnerships (*sociedades de responsabilidad limitada).* The former allows derived acquisition under any circumstances, as long as certain requisites and limits set down under Article 75[9]) are complied with. The latter, on the other hand, only allows this possibility under three sets of circumstances: in order to acquire holdings belonging to a shareholder partner who has left the company or been dismissed; in order to acquire holdings as arising from the application of a clause restricting transfer; or, in order to acquire holdings transferred by "mortis causa" (Article 40.1.d).

For a *workforce owned* company to be able to acquire its own shares or holdings then company employees, whether or not they are already shareholders and whether or not they are permanent employees, as well as all other company employees must not have exercised their preferential acquisition right (Article 7.6 LSL)

Once the company has acquired those own shares or holdings it may not retain them indefinitely. As a general rule they should be re-assigned within a period of three years or, if not, be amortised with the corresponding reduction in capital that they represent (Art. 78 LSA or 40.2 LSRL). If the company has managed to become the owner of its own shares or holdings these may then be offered to non-shareholder employees directly so that they may become company shareholders.

B) For a non-shareholder employee to become a shareholder in the case of transfer by 'mortis causa' the following requirements must be met:

- either the heir must be a company employee;
- or, the company Articles of Association must provide for preferential acquisition of worker class shares or holdings, according to the proceedings under Article 7. As long as this clause is set down in the company Articles of Association, employees will be entitled to the first option to buy.

[9] a) The agreement authorising such acquisition must expressly state: the means of acquisition, the maximum number of shares to be acquired, the minimum and maximum prices for the acquisition and duration of the authorisation. If the purpose of the acquisition is to provide shares directly to the employees, then the authorisation must state that it has been granted for that purpose; b) that the nominal value of the shares acquired, when added to those already held, should not exceed ten per cent of company capital; c) that the acquisition allows the acquiring company to set aside a reserve fund for the

C) In cases of increased company capital, the additional shares may be offered to employees, but this possibility is subject to a series of requirements. First of all, the Shareholder's Meeting must agree to the alteration of company capital. This requires a qualified majority of the votes. Secondly, given that the law sets down the preferential right to new share subscription in favour of existing shareholders, it is necessary to wait and see whether there are any unsubscribed shares or holdings which can be offered to employees "whether or not they are already shareholders" – as stated in Article 15.3 – in the manner provided for under Article 7. This preferential subscription right can be dismissed by agreement of the General Shareholders' Meeting with a favourable vote by qualified majority for the purpose of offering either all or part of those new shares or holdings to non-shareholder employees. In order to be able to do this they have to comply with certain requirements set down in Law (Articles 159 LSA and 76 LSRL): the call to Shareholders' Meeting must mention that with regard to the increase in capital there is a proposal to dismiss the preferential right to subscription; a Report must be drawn up and made available to shareholders at the company registered address with a note to this effect on the call to Shareholders' meeting, containing the Managers statement as to who is to receive the new shares or holdings. In so far as the price at which they should be acquired by employees, the LSL (Law governing *Spanish public limited SOCIEDADES LABORALES*) sets out different regulations for either the law governing *Spanish public limited SOCIEDADES LABORALES* or *Limited Liability Partnerships* in order to facilitate employee acquisition of those shares or holdings. Thus, with regard to the actual price of the holdings, the minimum amount to be paid by the person acquiring them in the event that the preferential subscription right is dismissed, or to the reasonable share price according to a report drawn up by the accounts auditor appointed for that purpose by the companies registrar, the actual amount to be paid by the employee for those new shares or holdings will be set at the Shareholders' Meeting (Article 15.4). This will, however, be subject to the same Shareholders' Meeting approving a company employee shares or holdings acquisition scheme and to the new shares or holdings being used to fulfil the purposes of that scheme, together with a prohibition on transferring them for five years.

amount of its own shares acquired, without any decrease in company capital, nor to legal or regulatory reserves which may not be disposed of; and, lastly, d) that shares acquired should be fully paid up.

D) Up until now we have considered the possibilities of shares or holdings being available for acquisition, subscription or absorption by employees in a *workforce owned company.* It should, however, be remembered that it is not sufficient simply for shares or holdings to be available. The employee must also be willing to acquire, subscribe or absorb them and that will not always be the case. In many cases employees do not wish to become shareholders as this creates duties and responsibilities that they do not wish to accept or else they may not identify with the company to the extent that one imagines. This also occurs in worker co-operatives and for that reason, the Law governing co-operatives expressly contemplates the possiblity that the employee who has a right to do so may not wish to become a partner and formally forgoes that right ([10]).

In other cases, even if the employee wishes to become a shareholder, he or she may not be able to do so due to being unable to meet the cost involved.

As we can see, there is no such thing as direct access for the employee to become a shareholder which only requires a request in that regard, but rather access to that condition is subject to the availability of shares or holdings and also to the employees having the circumstances to be able to acquire them.

Whatever the reaso, a *workforce owned company* may find that it has a large number of permanent employees who are not shareholders. In those cases the company concerned tends to avoid contracting long term employees on indefinite duration contracts in order to avoid losing its classification or the likelihood of losing it – even though the consequence is not good for the company. We may therefore conclude that although the measure limiting the maximum number of non-shareholder employees in a *workforce owned company* may help to achieve one of the principal objectives of a *workforce owned company,* it also has a damaging effect for both the employees and for the company itself and that therefore this should not be an obligation under law.

If a *workforce owned company* is run by the employees and is open to new shareholder employees, given that the former have preferential access when shares or holdings become available, the company should not lose its classification due to a lack of these being available nor because of the employees not being willing.

[10] According to Article 80 Law 27/1999 dated 16 July on Co-operatives, under Paragraph 7 therein: The number of hours/year worked by employees on company contracts may not be more than 30% of the total number of hours/year worked by shareholder employees. (…)b) any employees who explicitly refuse to become shareholder employees – will not count toward that percentage.

On the other hand, any legislation should bring together measures to enhance the likelihood of share and holdings being available, facilitate acquisition by employees and reward companies who make it possible for their employees to become shareholders. Among measures that would serve to increase the availability of shares and holdings we recommend that companies should have a greater degree of preference for acquisition when shares or holdings are being transferred, whenever these are not acquired by the employees and for the purposes of transferring them to employees at a more convenient time. It would also facilitate employee access to becoming shareholders in the company if the company had appropriate reserves in order to cover part of the employee costs payable for the acquisition of those shares or holdings that will enable that employee to become a shareholder.

RESTRICTIONS ON HOLDINGS IN COMPANY CAPITAL.-

The Law considers the size of holdings in company capital as the criteria by which to measure the degree of control held over a company. That is why it requires the majority of the capital to be held by the employees and states that no one shareholder may have access to shares or holdings representing more than one third of the company capital with the exceptions set out under the regulation itself. This criteria was valid prior to 1995, because the right to vote was proportional at that time to the company capital held. With the advent of Law 2/1995 regarding Limited Liability Partnerships, however, voting ceased to be necessarily proportional to the amount of company capital held. It is therefore possible for employees in a *workforce owned company* to have the majority of the capital but not of the votes. This means that they do not effectively have the control over the company which is intended. Consequently, either the criteria used to measure the capacity of control should be changed and the majority of voting rights used instead or else there would have to be a requirement for all holdings to have the same value and to carry the same voting right. The first option would appear to be the most advantageous as far as the company is concerned because it would allow long term employees on indefinite period contracts to run the company without having to own the majority of the company capital.

PREFERENTIAL RIGHT FOR THE ACQUISITION OF SHARES OR HOLDINGS.-

The preferential right of acquisition constitutes a restriction limiting transfer of shares and holdings and thereby reduces their value. For that reason it should only be acknowledged in law in order to enhance the *workforce owned* aspect of the company. Company shareholders can always, in order to protect their interests, stipulate further restrictions in the company Articles of Association if they wish to favour the closed company model or to be a company that includes all of its employees (on both permanent and temporary contracts).

Keeping restrictions on transfers to a minimum would imply legal recognition of a preferential right exclusively in favour of the employees, and of the company for later transfer to non-shareholder employees.

CHANGES TO THE WAY *SOCIEDADES LABORALES* ARE TAXED.-

We believe that there are a multitude of reasons to criticise the current tax regime for *SOCIEDADES LABORALES* and can set these out in two blocks:

First of all, the way they are taxed can hardly be called a regime and therefore, even less so a regime intended to provide incentives for the social role fulfilled by this type of company. Thus, as we have already pointed out, an opportunity has been missed to design a tax method in accordance with a legal entity that accomplishes objectives which are highly valued by the legal system[11]. Additionally, there are inherent technical defects that can lead to confusion about the regime that is actually applicable and these can appear to provide a higher level of incentives than they actually do.

Secondly, the tax requirements necessary for entitlement to the small number of tax benefits set down for *SOCIEDADES LABORALES* are neither adequate in order to guarantee the end aims which they theoretically wish to protect, nor are they

[11] DE LA PEÑA VELASCO,G.already points out that there is not really what one could call a tax regime per se "Tax Regime for *SOCIEDADES LABORALES*", in Judicial Regime for SOCIEDADES LABORALES (*Régimen jurídico de las Sociedades laborales) (law 4/1997)*, Tirant lo Blanch, 1997, page 176; VALPUESTA GASTAMINZA,E./BARBERENA BELZUNCE,I. SOCIEDADES LABORALES (*Las sociedades laborales.)* Company, Workforce and Taxation Aspects (*Aspectos societarios, Laborales y fiscales*.) Aranzadi.pages 207 further states that "…said law represents a lost opportunity to set up a tax regime for *SOCIEDADES LABORALES* in greater accord both with the aim that it is trying to achieve (contributing to promoting and developing this type of company according to the Summary of Grounds), and with the grounds that justify its existence (the social role, in addition to the financial economic role, inherent in the creation and existence of these companies, also in the words of the Summary of Grounds)."

proportionate with regard to the benefits available when those requirements are fulfilled. At times this creates a burden for the company, and in the worst instances even ends up being counterproductive to the desired effect, as we shall see.

1. Criteria borne in mind for the proposal.

The following criteria have been taken into account when preparing the proposal to change the tax regime:

Firstly, the technical links in the current incentives system have been reviewed in order to adapt these to regulation changes and to rid them of errors, overlays and contradictions.

Secondly, a regime of incentives has been drawn up strongly guided by three principles:

Firstly that they should constitute a coherent regime which is suitable for *SOCIEDADES LABORALES* to be able to fulfil the **aims** for which they alone are intended and which are generally of interest, both to the country and the community. These can be grouped into:

1) The fact that they constitute an efficient instrument for creating and maintaining quality jobs.

2) Equally, that they should serve as a vehicle enabling employees to own a share of company capital, with the advantages this brings[12], and to be

[12] MERCADER UGUINA,J. "New forms of employee participation in company management and the European Constitution as background", *Magazine published by the Ministry for Work and Companies,* No. 547, Page 298: "All the official institutions, both national and international have clearly promoted the introduction of companies that provide incentives based on shares as a medium and long term method of remuneration, as opposed to traditional systems of payment in cash subject to certain conditions. The "…company formats which seek to provide "share of ownership" or "company profit share", above all are the most successful. " Page 300. The POUTSMA,E. report highlights it as follows "Recent developments in financial participation within the European Union", March 2000, Page 54. OECD (1995) *Employment Outlook,* Paris, July 1995, Page 160, states that financial shareholding by employees is always associated with increased productivity, whatever the method. See JAUREGUI,R./MOLTO GARCIA,J.I./GONZALEZ DRENA,F "A future for work in the new *workforce owned company, "Un futuro para el trabajo en la nueva sociedad laboral"*, Valencia, Tirant lo Blanch, 2004, Page. 398. with reference to that report and its relevance so far as *SOCIEDADES LABORALES* are concerned. For its part, the VAN DEN BUCKLE (2000) report "A company entrepreneur perspective on financial involvment in the EU: advantages and difficulties", lists the reason given by company entrepreneurs for the introduction of profit share schemes: 1) employee retention; 2) motivation and a feeling of belonging; 3) An instrument for attracting capital, especially for companies in their initial phase. The EUROPEAN FOUNDATION FOR IMPROVING LIVING AND WORKING CONDITIONS (2001a) *Employee share-ownership and profit-sharing in the EU*, (2001b) *Employee share ownership and profit-sharing in the EU.*considers the advantages of those systems, their positive influence on employment levels and stability; that in certain cases they can serve to finance the companies and that they fulfil objectives of social cohesion. ,

an unusual example of this type of phenomenon as there are three aspect which distinguish them from the usual methods of company ownership:

a. The ownership is contained in the company structure itself, within the actual legal form of company[13];

b. It constitutes, not just a simple mechanism for profit share, but a genuine route for workers to gain ownership of the company and for that reason belong in the Social Economy sector.[14];

c. This is a kind of company which is usually an SME, in the sense that this is defined by the European Commission within its Recommendation dated 6 May 2003. It will therefore face problems which the Commission has highlighted that the SMEs have to face in order to be able to use worker ownership systems. Those difficulties derive, on the one hand, from the costs involved with those systems; and, on the other hand, from the difficulty that because they are not quoted on the stock market means a lack of share availability[15]. That condition, furthermore, means that they will benefit from the policies to promote this kind of company which the EU is developing. Both these issues should be borne in mind with regard to the tax regime.

In this sense, tax benefits should be provided for the incorporation itself and start up of this type of company, as SMEs, but more so than for general companies in this category in that they achieve more intensive objectives. For that reason, the benefits

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[13] As indicated by ALONSO RODRIGO,E. Co-operatives and SOCIEDADES LABORALES taxability (*Fiscalidad de cooperativas y sociedades laborales),* Generalitat de Catalunya, Barcelona, 2001, Page 287: "…the fact that over half the company capital is in the hands of the shareholders means that in many cases the traditional tension which exists between work and capital is relaxed, or, to put it a better way, between the search for the maximum shareable profit and setting appropriate salary levels." See "SOCIEDADES LABORALES and the ESOP, an example of worker participation." *(Las sociedades laborales y los ESOP, ejemplo de participación de los trabajadores*), *Gatza*, no. 113, July 2005.

[14] Put this way by MERCADER UGUINA,J.R./PORTELLANO DIEZ,P. "The workforce owned company: a simply special kind of company" (*La sociedad laboral: sencillamente una sociedad especial*), Labour Relaitons, 1997, I, page. 1156; CELAYA,A. "Co-operative work companies and SOCIEDADES LABORALES: comparative company configuration" (*Sociedades cooperativas de trabajo y sociedades anónimas laborales: configuración societaria comparada),* Magazine Derecho Mercantil, no. 191, 1989, Pages. 118 and 121; ALONSO RODRIGO,E. Taxability of co-operatives and SOCIEDADES LABORALES (*Fiscalidad de cooperativas y sociedades laborales*) Generalitat de Catalunya, 2001, Page 74.

[15] In fact, there is also an obvious relationship between companies that are quoted on the stock market and those which have a scheme for worker shareholding. On this point POUTSMA, op.cit., 2001, Page 55; McCATNEY,J. "Financial participation in the EU: indicators for benchmarking", *Oficina de publicaciones de la Comunidad Europea*, Luxembourg, 2004.

linked to creating and growing *SOCIEDADES LABORALES* are linked to their existence and classification as such.

The more intensive incentive proposals, on the one hand, are aimed at stimulating finance for the company, by payment into reserve funds; also, however, to bringing in mechanisms which may eventually be used to increase the amount of company capital and thereby improve the likelihood of attracting outside finance. Tax advantages are also provided for worker share acquisition schemes which could, among other aims, imply that these might finance the company for investments that it carries out.

On the other hand, along the same lines, tax advantages are provided for long term workers on indefinite period contracts to share in company capital. That line of action is deemed to be more appropriate than setting limits on contracting that type of employee. Removing that limit, therefore, is compensated with a series of measures aimed at stimulating the existence of available shares or holdings and at the company partly financing the acquisition, subscription or absorption. Any investments made by the persons setting up the company or by the employee are also favoured.

The second idea, and with regard to this point of providing incentives for employees to share in company capital, is to particularly bear in mind the **EU Commission Recommendations** set out in its Communiqué regarding a framework for employee share in company finance, issued in July 2002[16], and based, in turn, on conclusions reached following a prior debate with the interested parties on the basis of Report which had been requested by the Commission itself[17]. There are four recommendations in particular contained within that Communiqué which apply to the tax system: the first of these is adjusting to the 8 principles which the Commission considers that any scheme for employee share in company capital should entail if it is to be recommended; the second is to do with specifically adapting to the idiosyncrasy of SMEs; the third, as in previous Communiqués, provides tax incentives for this type of system; the fourth concerns taking the experiences of countries where the legal mechanisms have been successful as reference. Specifically, the research projects carried out at the Commission's request[18] recommend SOCIEDADES LABORALES

[16] COM (2002) 0364 end

[17] From the document "Financial participation of employees within the European Union". Work Document of the SEC Commission (2001) 1308.

[18] EUROPEAN FOUNDATION FOR IMPROVING THE QUALITY OF LIVING AND WORKING CONDITIONS "Financial participation for small and medium-sized enterprises: Barriers and potential

as one of the possible types of scheme for European SMEs, alongside the French system and the Irish system of free provision of shares.

Most countries set out some tax benefits for financial participation in company capital, both for the company part (usually that the provision of shares or contributions towards the acquisition of these constitutes a cost which may be deducted from the basic taxable amount of income tax), and also for the employee's part. Generally, any contributions on the part of the company are usually tax free for the employee or at least taxed at a lower rate. So, there are generally tax benefits available for any investments by employees into the acquisition of shares in the company for which they work and this usually takes the form of treating these amounts as exempt from person income tax and, often, also from Social Security payments.

It is also usual to link financial share of profits with said profits then being set aside to purchase shares in the company, together with amounts provided by the employees themselves as deductions from salary and all this would be tax free. These amounts are withheld for a period of time (usually somewhere between 3 and 7 years) either in an internal company fund or in an external Fund. This system, then, achieves several objectives: it acts as financial participation, permitting the employees to build up assets by saving, as well as sharing in the capital of the company for which they work and also that it acts as an instrument for financing the company.

As well as the recommendations set out in this Communiqué, obviously those of the European Parliament and Council have also been taken into consideration, as well as the conclusions and suggestions contained in reports carried out on behalf of the Commission itself by independent experts[19]. Current tax benefits in various EU countries for the different systems of employee financial participation have been

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solutions", op.cit., Page 4) highlights the fact that the CESE view on financial participation is that the experience of co-operatives and employee limited companies should serve as a reference framework. The same report (Page 8) gives the example of a system which combines the nature of SMEs with employee participation in Spanish SOCIEDADES LABORALES and work associated co-operatives.

[19] As far back as 1991, the Commission ordered the PEPPER report (UVALIC,M. *The Pepper Report: promotion of Employee participation in profits and enterprise results in the Member States of the European Community*, published in Supplement 3/91, by Europa Social, Brussels, 1991.), which formed the basis for the Commission recommendation dated 5 May 1992, later adopted by the Council on 27 July (92/443/EEC) regarding promoting employee participation in company profits and enterprise results (including participation in company capital). Among the recommendations the Council makes to Member States was that they should consider "…the possibility of conceding stimulants such as tax incentives or other financial advantages, in order to encourage the introduction of certain formulae for participation…" Thus point 10 of the Annex to the Recommendation reflects the difficulties faced by SMEs for putting these plans in place and recommends avoiding complex legal formulae

reviewed, as well as the results in practice, according to follow up reports requested by the Commission.

On the basis of this data, mechanisms have been selected which, given their simplicity and capacity for adaptation to the idiosyncrasies of the *Workforce Owned Company* could, once appropriately modified, be adopted into this regime. We have preferred a system which is more similar to the French system, perhaps due to the closeness of our traditional legislative and judicial systems, rather than the British or Irish systems, although some of the elements of the regulated schemes available in those countries look very interesting and have been the basis for some of the aspects put forward herein. An attempt has also been made to make sure that these new elements being introduced are not radically different from our tax system as it is and have therefore lead them to institutions which already exist, insofar as possible, in this system and which are sufficiently well known..

The third, no less important, point was that the proposal should be designed so as to meet the demands of European Law regarding prohibitions of **State aid** which are incompatible with the Treaty[20] (Article 87 of that text). In view of that condition we have had to make sure that the tax benefits proposed come within the "nature or economy of the (Spanish) taxation system" and do not constitute an advantage which could distort competivity and affect trade between the Member States.

To this end it was, on the one hand, necessary to be sure that the purpose we are trying to achieve with beneficial measures should be properly adapted to EU community policies and initiatives or should balance out a specific *handicap* this type of company faces in view of the judicial system in place. Furthermore, that those measures fit with explicit Commission criteria as being reasonable.

The incentives put forward, in general, fit into several EU protected policies: Firstly that the measures providing incentives for creation and start up fit into the policy favourable to the creation and maintenance of SMEs[21], described herein, applicable to the first company tax years. The measures providing incentives for investment in *SOCIEDADES LABORALES* made by those setting them up or by long term workers on indefinite period contracts also serve the same purpose. On the other hand, these

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[20] Exactly on this point, the Commission in order to clarify adapting the notes for this concept to tax measures, issued a Communiqué in 1998 regarding the application of regulations to state aid for measures relating to direct taxation on companies (98/C 384/03)

[21] See, in this sense, Green Paper "The Entrepreneurial Spirit in Europe", COM(2003) 27, dated 21 January 2003, DG Company Publications, Brussels, 21 January 2003.

measures will help to stimulate the creation of risk-capital, also encouraged by the Commission (see the recent Communiqué in this regard dated 19 July 2006). They therefore, in co-ordination with the regulation for the Special Reserve Fund, serve to fulfil another EU initiative[22]: to enable small companies to be handed down to the next generation by transferring part of the share stock to employees.

Lastly, and by no means less important, employee involvement as we propose is a clear example of design according to the EU community policy of companies social responsibility. The Commission defines this concept in the Green Paper "Promotion of a European framework for companies social responsibility[23]" such as "…the voluntary inclusion, on behalf of companies, of social and environmental concerns in their commercial operations and relations with others".

The proposals are, furthermore, in proportion with the social responsibilities that lie with the company. Lastly, the resultant level of market distortion will be barely noticeable in that it can be easily fitted into the level of assistance deemed as "de minimis", and the regime for this type[24] is currently set down under (EC) Commission Regulation No. 69/2001, dated 12 January 2001[25].

2. General lines of the proposal.

The regime of incentives is an attempt to adapt to the principles set down in the European Commission Communiqué of 2002 and, together with those already in existence, can be categorised into three major groups:

1. Incentives for incorporation, start up and company growth of *SOCIEDADES LABORALES,* based either on the company incorporation per se or on attaining classification, and the first few years of operation.

2. Permanent "operational" regime and incentives.

3. Tax benefits for workers who invest in the *workforce owned company.*

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[22] In effect, there is a large proportion of small companies in Europe that either already do or will require solutions over the next few years in order to remain in business, as highlighted in the Green Paper "Entrepreneurial spirit in Europe", paragraph B ii *Taxation,* "The tax regime for handing companies over is particularly worrying to family businesses, which comprise a large portion of European companies."(COM (2003) 27)

[23] In July 2001 (COM (2001) 366)

[24] On this subject please see ARPIO SANTACRUZ, 'Available assistance..' '*Las ayudas...,* op.cit., page 178 onwards.

[25] DO L10 dated 13.1.2001, pages 3-32.

Furthermore, the benefits applicable to the company will also be divided up into three "levels" of different intensity and would thus correspond to the level of requirements necessary in order to be entitled to the benefits.

Current incentives under the ITP/AJD[26] remain as before – revised and slightly amended – for the "first level". This would simply consist in the company having obtained classification as *workforce owned*, implying that it has complied with the inherent requirements for that classification, as set out and planned under the proposal. Another benefit is exempt from making part payments in the financial years which began during the first two years from the date the company was incorporated.

In order to receive "second level" benefits the company would have to set aside to the financial reserve fund covered under proposed Article 12 of the law, consisting of 10% of profits until the amount of company capital is attained. Fulfilling this requirement brings entitlement to two tax benefits: the ability to discount profits that are reinvested in fixed assets from tax liability and freedom to amortise.

At the "third level", a special tax rate of 20% would apply. This benefit would only be applied to companies with provisions under their company Articles of Association showing that at least 25% of the special reserve fund will be used to facilitate employee access to company capital, in accordance with an employee share or holdings acquisition scheme.

	Requirements	Benefits
1	Classify as *Workforce Owned Company* (Art. 17.1)	- ITP/AJD Benefits (Art. 18.1) - Part payments exempt for first two years (Art. 18.2)
2	Setting up (and funding) a Special Reserve Fund provided for under Article14. (Art. 17.2) Set aside the amount of the cost deducted to Special Reserve Fund	Free to amortise. Discount for re-investment of ordinary profits into fixed assets. (Art. 18.3)

[26] ITP Spanish Capital Gains Tax /AJD Tax on Documented Legal Acts

3	Setting up a Share Acquisition Scheme. Using 25% of Special Reserve Fund (Art. 17.3)	- 20% Tax Rate (Art. 18.4)
	No requirements	Not subject to setting aside company shares or contributions in order to acquire shares or holdings (Art. 18.5)

The tax benefits programme therefore attempts to allow a *workforce owned company to* participate or else to design a more or less simple/complicated system for employees to share in company capital and provides different incentives for each type of system.

INCLUSION UNDER THE SOCIAL SECURITY SYSTEM

The very definition itself of a *workforce owned company* as comprising long term employees on indefinite period contracts places them within the General Regime for contributions to the Spanish Social Security system for employed persons. Nevertheless, the regulations set down under legislation governing social security matters has introduced certain aspects which have, in fact, broken with this general principle that corresponds to the characteristics of *SOCIEDADES LABORALES.*

The manner of inclusion (in the Social Security system) for shareholder employees in *SOCIEDADES LABORALES* has had an effect on a fundamental aspect of the internal company regime i.e. whether or not those employees play a role in company administration and management.

SOCIEDADES LABORALES, as we have said, comprise a judicial model that includes elements within the company structure itself that are currently being promoted by the European Union with regard to SMEs e.g. employee share of company profits and, in certain cases, use as a legal instrument to allow the company itself to access those funds or, as provided for under the Spanish Constitution, to ownership of the means of production. (Article 129-2).

Share in the company, then, and participation in company management are basic characteristics of the shareholder employee in *SOCIEDADES LABORALES.*

When the Law which came out in conjunction with the general 1998 national budgets (Law 67/1997) regarding tax, administrative and company measures) altered the manner of inclusion in the Social Security system for shareholder employees

carrying out unremunerated administrative roles, this caused a serious problem for shareholder employees becoming involved in company management. It effectively meant that they had to alter the manner in which they pay social security going from the General Regime to the special Regime for Self-Employed Workers (RETA) and implied a change in their rights and social security and national health service cover which was almost always of a temporary nature and lasted for the length of time that they continued to act as company administrators or as members of the Board of Directors. This fact led to a refusal to participate in management. While their work colleagues enjoyed the cover supplied under the general regime they were not only supposed to take on additional responsibilities but found that their social security entitlements were reduced (unemployment, Fogasa, pension rights). The regulations had created a duality in payment procedures and entitlements which seriously undermined the desirable and useful possibility of all shareholder employees being able to take part in company management, by being able to sit on the executive board.

This had an extremely pernicious effect and a certain degree of normality was only re-introduced later on, when the regulation was amended (Law 50/1998 of taxation, administrative and company measures) along the lines of the present wording of Article 21 of current Law 4/1997 dated 24 March regarding *SOCIEDADES LABORALES.*. This still, however, forced any company executives holding individual proxy as severally liable, to fit in as “covered under the General Regime” i.e. with no right either to unemployment benefits nor to FOGASA.

Spanish public authorities are encouraging entrepreneurship in all its forms: for individuals (bringing out the Law Statute for Self Employed) and collectives: promoting SMEs able to either take up legal form as general trading companies or special legal formats such as New Company Limited Company, *SOCIEDADES LABORALES,* Co-operatives…… etc. On the other hand, the system applicable to shareholder co-operative employees to all effects just like salaried employed workers, provides them with all the pertinent social security rights (right to unemployment benefit, shareholder for a specific time period, employment regulations (regarding dismissal and temporary suspensions of contracts),…etc) and already exists in reality. If one bears in mind the fact that they have a “company type” (rather than employee type) relationship with the Co-operative, this shows that Government is prepared to be sufficiently flexible and could therefore apply that same flexibility by accepting the proposal put forward for *SOCIEDADES LABORALES.* i.e. the freedom to choose between the General Regime

and RETA (self-employed). The proposal is to amend Article 21 of this law in that sense and to allow the company to choose and set down in the company Articles of Association whether it prefers shareholder employees as a whole to be fitted in to the General Regime or into the RETA (self-employed) regardless of whether or not they hold positions in the company administration.

PROPOSAL FOR CHANGES TO THE CURRENT LAW REGARDING SOCIEDADES LABORALES.-

Any change to the legislation governing *SOCIEDADES LABORALES* should not only adapt the text to recent changes in law, but also point out the key points of *SOCIEDADES LABORALES,* remove any peculiarities that are not really justified and make the judicial regime more flexible. We propose the following changes among amendments to be introduced.

Amendments to Article 1. "The Concept of *Workforce Owned Company*".-

Article 1 is intended to reflect the key characteristics which serve to define the concept of *workforce owned company.* These traits, however, are currently to be found under Articles 1 and 5.3. It would therefore be a good idea for these points to be grouped under the new Article 1.

Paragraph two of Article 1 currently covers the restriction on the number of long term workers on indefinite period contracts in a *workforce owned company*. This regulation was amended under Law 62/2003, dated 30 December, for the purpose of leaving out any physically handicapped employees from that calculation. This entire regulation should be removed for the reasons given above. The immediate effect of this regulation is simply that it penalises employing long term workers on indefinite period contracts and does not facilitate access to becoming a shareholder in that said possibility, as we have seen, does not depend exclusively on either the employee or the company. If it is not removed then compliance with this regulation should be assisted by tax or other similar measures.

They should be included instead under Paragraph 2 of current Article 5.3 which covers the maximum amount of capital which any one shareholder may own in the *workforce owned company,* as this is another key point of the *workforce owned company* concept.

The principle, however, deserves to be improved. The maximum limit set down is that no one shareholder may own more than a third part of the company capital, except certain entities which may own a higher percentage but no more than 50%. The list of such entities as given seems to be insufficient as it does not cover capital risk companies governed under Law 1/199 dated 5 January and this could be very beneficial for financing *SOCIEDADES LABORALES.* The regulation should, on the other hand, be simplified and this could be achieved by keeping the list just to public entities, capital risk companies and not-for-profit organisations while any others would come under the general rule restricting capital investment to a third of the total amount.

This article should also, as a final regulation, include the last paragraph of Article 5 which regulates the event that the limits set down in this article are exceeded.

Lastly, for the reasons given above, reference under this article to capital should be replaced by voting rights.

Article 1. The «*Workforce Owned*» principle.

1. Any Spanish Public Limited companies and Limited Liability Partnerships in which the majority **of voting rights belong** to workers who personally and directly perform paid work for that company, and who have a long term contract for an indefinite period, may be classified as «*Workforce owned company*» when they meet the requirements set out under this Law.

2. ***In a workforce owned company,*** *no one shareholder may own shares or holdings representing more than one third* ***of voting rights****, other than in the case of* ***public entities, risk capital companies and not-for-profit organisations,*** *in which case the amount of shares held can be greater than that restriction but not as much as 50 per cent. (art. 5. 3),*

3. In cases of non-compliance with the limits set down, the company must make changes in order to adapt to the Law within a period of one year from the first date of non-compliance with any of those limits. (art. 5. 3)

Amendments to Article 3 "Company Name".-

When naming a *workforce owned company* the following terms may be used: "*Spanish Public Limited Workforce Owned Company (*Sociedad Anónima Laboral*)*" or "*Workforce Owned Limited Liability Partnership (*Sociedad de Responsabilidad Limitada Laboral)". It will not be possible to use the term –as J. Boquera ([27]) points out- "*Workforce Owned Limited Company (*Sociedad Limitada Laboral)", even though Article 2.1 of Law 2/1995, dated 23 March LSRL allows the term "Limited Company". A future law should acknowledge the use of this shorter term for *SOCIEDADES LABORALES.*

It would also be useful to expressly set out under this principle that the adjective *workforce owned* (laboral) may not only not be used in the name of a company which has not been classified as *workforce owned*, as stated under Article 3.2, but that it may not either be used by a company which has lost its classification.

Article 3. Company Name.

1. Either the wording "Spanish Public Limited *Workforce owned company*" (*«**S**ociedad **A**nónima **L**aboral»)* or "Worker Owned Limited Liability Partnership" (*«**S**ociedad de Responsabilidad **L**imitada **L**aboral)* must be included in the company name or else the abbreviations SAL or SLL, whichever applies.

2. The adjective «workforce owned» *(laboral)* may not be included in the company name of any company which has not been classified as a "*Workforce owned company"(*«Sociedad Laboral»).

3. The adjective 'workforce owned' *(laboral)* must be shown on all documents, correspondence, purchase orders and invoices, as well as in any published advertisements, in accordance with legal or regulatory provisions.

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[27] Boquera Matarredona, Josefina; in "Name, registered address, challenging agreements and the right to preferential subscription in SOCIEDADES LABORALES" in Ciriec. Judicial Magazine - *Revista Jurídica de Economía Social y Cooperativa*, No. 15, October 2004 page. 31.

Amendments to Article 4. Administrative Register for SOCIEDADES LABORALES and co-ordination with the Companies Register.-

This principle covers setting up an administrative Register for SOCIEDADES LABORALES and regulates aspects of how it will work such as the requirements necessary for *SOCIEDADES LABORALES* to become legal entities.

The regulation also sets out certain duties for both companies and the Company Register to notify and co-operate with this Registry.

The duty imposed under Article 13.2 on Judges hearing certain matters relating to *SOCIEDADES LABORALES* to co-operate with the Register should be included under this regulation.

In order to include this regulation there would have to be a slight alteration to the paragraph order and change to the heading.

Article 4. Administrative Register for *SOCIEDADES LABORALES* **(...)**

1. A Registry for *SOCIEDADES LABORALES* is set up within the Ministry of Work and Companies, to maintain records of all legal procedures as set down under this Law and under its own working regulations, all without prejudice to the jurisdiction over these matters lying with the Autonomous Communities.

2. The company will be considered as a legal entity from the time that it is entered on the Companies Register, even though in order for a company classified as *workforce owned* to be entered in that Register it must present the certificate proving that said company has been classified either by the Ministry of Work and Companies or by a competent body of the respective Autonomous Community and entered as such on the Administrative Register referred to in the paragraph above.

The fact that a company is classified as a *workforce owned company* will be noted at the Companies Register by means of a margin note on the open company registration entry, in the manner and within the time periods set down under the regulations concerned and notification issued to the Administrative Register.

3. When either a Spanish public limited company (SAL) or a Limited Liability Partnership (SLL) obtains classification as a "workforce owned company" this is not considered to be an alteration to the type of company and neither is it subject to the regulations applicable to changes in type of company.

4. All "worker owned companies" must, on a regular basis, inform the administrative Register of any share or holding assignments providing certification of the register-record of bearer shares and of the Shareholders' Record.

5. Any Judge hearing a challenge to any company agreement which may affect the capital share composition or a change of registered address outside the municipality shall inform the Worker Owned Companies Register of the existence of that court action and the grounds on which it has been challenged, as well as of any ruling either upholding or refusing the challenge. (art. 13. 2)

6. The Companies Register will not enter any amendments to the Articles of Association for any Workforce owned company, which either affects the composition of share capital or a change of registered address outside the municipal area, unless the company concerned duly provides a certificate in that regard issued by the Worker Owned Companies Register as appropriate or showing either the decision that the amendment does not affect the company classification as a workforce owned company, or that the change of registered company address has been entered on that register.

Changes to Article 5 "Company capital and shareholders".-

If the number of voting rights held by the shareholders is chosen as the criteria – as we suggest under Article 1 –for deciding who is in control of the company, then it will not be necessary to require under this Article that the shares and holdings have the same value and confer the same rights.

This option therefore allows shares and holdings of different values and even with different rights, the important point being that control of the company continues to remain with long term employees on indefinite period contracts.

Paragraph 2 of Article 5 states that it is not valid to create worker class shares without voting rights. The regulation referred only to shares, because shares without voting rights were only allowed under the Law governing Spanish Public Limited Companies (*Sociedades Anónimas* (Articles 90 to 92). Further to Law 7/2003 dated 1 April this has been extended where Article Five incorporates Article 42 b into the Law governing Spanish Public Limited Companies, allowing and regulating holdings without voting rights.

This new element means that it is necessary in turn to amend Article 5.2 of the Law governing *SOCIEDADES LABORALES*, in order to also set down that it would not be valid either to create any worker class holdings that lacked voting rights.

> **Article 5.** Company Capital and Shareholders.
>
> 1. Company capital will be divided into bearer shares or company holdings. In the case of «Workforce Owned Spanish Public Limited Company», any passive dividends must be paid out within the deadline set out under the company Articles of Association.
>
> 2. It will not be valid to create any worker class shares **or holdings** that do not carry voting rights.

Amendments to Article 6 "Types of shares and holdings".-

Article 6 sets out under Paragraph 1 that any shares or holdings in *SOCIEDADES LABORALES* will be divided into two categories, those owned by long term workers on indefinite period contracts and the others. The first type will be called "worker class" and the second type "general class".

That regulation was clear in principle but problems arose, however, in attempting to regulate the duality of title classifications when it was later accepted that an employee could hold both types of share or holding (Article 6.3) or whenever it was unclear what should happen if a non-employee shareholder acquired any worker class shares or holdings, in contrast to Law 15/1986 dated 25 April which required in this case that the category of shares should be altered (Article 8.4).

Neither did the current law, furthermore, retain a regulation present in the previous 1986 law which stated that: "The shares may be retained in the portfolio as long as they are shares set aside for workers…." (Article 6.3). The current law allows *SOCIEDADES LABORALES* to retain shares and holdings in their own portfolios, but does not specify what category these should be. For that reason a statement could be included to say that if the company acquires any titles of its own, whatever type of shares or holdings they are, these should be converted to general class holdings in that the company is not an employee. This conclusion is opposed to the regulation set down under Law 1986 and it further does not meet the main purpose of allowing a company to acquire its own shares or holdings, and that is in order that they may later be shared out between the employees.

For that reason the law should expressly state that the company may own both general and worker class shares.

Paragraph 3 of Article 6 covers the possibility of long term workers on indefinite period contracts acquiring general class shares or holdings. In this case, whether or not they are converted into worker class titles is at the discretion of the employee concerned and it is therefore possible for an employee to hold both types of titles. This possibility breaches the main reason behind the different categories of holdings, which was to be able to count up the numbers of shares or holdings belonging to the employees and to subject these to a special regime for transfer.

Furthermore, the legislator does not consider what might occur when a shareholder who is not an employee acquires worker class shares or holdings, in that there is no provision for these to be converted either at the request of the shareholder or of the company. This raises the question of whether or not they may be kept as worker class holdings by those shareholders.

These situations raise the question as to whether or not it makes sense to continue categorising shares and holdings as either general class or worker class or whether it would be sufficient for them all to be deemed bearer shares and to apply a different judicial regime dependant on the category of the bearer of that share or holding.

There is no single answer to this in view of the different nature of the shares and holdings. Shares are bonds and they are transferred according to transfer regulations for bonds. The shareholder is entitled to rights he or she acquires by reason of owning a share (Article 48.1 LSA – Law governing Spanish Public Limited Companies - *Sociedades Anónimas*) i.e. one becomes a shareholder by virtue of the fact of owning a share and that share must show which rights have been acquired. The share must therefore be set down as a title (or noted in an account) which, additionally, as stated under current Article 6.2 LSL (*Law governing Sociedades Limitadas)* can either be single or multiple, must be sequentially numbered and show which category of share it is. The company Articles of Association must also set down the number of shares of each category and the rights that each category confers (Article 9.g LSA - Law governing Spanish Public Limited Companies - *Sociedades Anonimas*).

On the other hand, to have a holding in a *workforce owned limited liability partnership* is not a bond as such and cannot be represented by a title or a note in the accounts (Article 5.2 LSRL). A holding is transferred according to regulations

governing credit arrangements. The fact of being a shareholder does not come about by virtue of owning the holding but by virtue of a public document which asserts the person as a founder (public deed of incorporation) or as having acquired a share of the company capital. This is why, as required under Article 26 LSRL, transfers of holdings must be set down in public documents. The company Articles of Association have to show the number of holdings into which the company capital is divided, their nominal value and their sequential numbering. There is no requirement for the holdings to show that rights are acquired as employee shareholder on an indefinite period contract.

The different kind of holdings could be eliminated in a *workforce owned limited liability partnership*, but not in a *workforce owned Spanish Public Limited Company*. For that reason it is advisable to retain the distinction between worker and general class categories, although conversion from one type to the other should be made simpler.

If one wishes to retain the distinction then it would be necessary, in order to comply with Paragraph 1 of this Article 6, for that conversion from one category to the other to be carried out by the company executive board when required. All titles held by shareholders who are not employees would therefore be general class and all those held by employee shareholders on indefinite period contracts would be worker class.

Additionally, in order for these adjustments to comply with the law in a normal fashion the procedure for conversion of titles should be expedited and could be carried out by the company directors. It would be sufficient to simply file certification of the agreement reached with the Companies Register.

Article 6. Types of Shares and Holdings.

1. Any shares and holdings in *SOCIEDADES LABORALES* will be split into two categories: those belonging to long term employees on indefinite period contracts and the others. The first type will be called «worker class» and the second type «general type». **The *workforce owned company* may own shares or holdings of either category.**

2. In the case of a «*Spanish Workforce Owned Public Limited Company* –SAL) », shares will necessarily be represented by title bonds, either single or multiple, sequentially numbered and which, in addition to the generally required notes, will show the category of that title.

3. **Whenever long term workers on indefinite period contracts acquire any general class shares or holdings or whenever anyone else acquires worker class holdings, then**

the change of category will be formally carried out by the company administrators, without any need for a Shareholders' Meeting agreement. **That change will be carried out by a decision of the administrative body and will be entered in the Companies Register by means of a certified copy of that decision.**

Amendments to Article 7 "Preferential acquisition rights in the case of voluntary "inter vivos" transfer.-

Article 7 governs voluntary *inter vivos* transfer of workers' and general shares and holdings. That article, in contrast to the articles it replaces (Articles 7 and 8 of Law 15/86) restricts the transfer of both workers' and general shares and further complicates the process in that it expressly acknowledges a preferential right of acquisition for temporary workers, with preference even over acquisition thereof by the company itself. That article should be extensively amended for several reasons.

First of all, and with a view to enhancing their negotiability the free transfer of shares and holdings should apply only to transfers essential to enhancing work force ownership of the company. The transfer of general shares and holdings and the transfer of workers' shares and holdings between employees with long term contracts for an indefinite period should be unrestricted.

This solution would not prevent a company, if it deemed so appropriate, from imposing further restrictions (or even preventing) transfer of its shares or holdings by means of the corresponding restriction set out under the Company Articles of Association.

Problems affecting viability of the company work force would only arise with this type of free transmission if it led to any one shareholder becoming particularly powerful, thereby exceeding any one of the limits to which the company must adhere and provided for under current Article 5.3. In the event that those limits were exceeded this would place the company at risk of losing its classification as a workforce owned company at the will of one shareholder, without that situation necessarily being accepted by the shareholders overall. In order to avoid this type of situation, it would be appropriate to notify the company, prior to the shares being transferred, of the number of shares to be transferred and of the identity of the person acquiring those shares. The

purpose of such notification would only be to prevent the transfer in the event that the company classification as *worker owned* might be affected due to certain limitations being surpassed. It would only be possible to refuse authorisation as long as a buyer for all the shares or holdings to be transferred in that case were put forward.

The preferential right of acquisition as it currently exists in favour of workers, shareholders or otherwise, employed over long term for an indefinite period, shareholders who are not employees, salaried workers and the company, should be limited just to those persons who can guarantee company workforce viability i.e. long term employees on indefinite period contracts and the company itself. Other groups could hold preferential rights if the Company Articles of Association for any particular company deemed this appropriate. This would permit some companies to reinforce their closed nature either by giving preference to pre-existing shareholders or by including temporary workers as shareholders.

In the event that several people wished to acquire the shares or holdings offered, then legislator could choose to distribute these equally between them (Paragraph 5) as opposed to Law 15/86 which chose instead to share them out in inverse proportion to their respective shareholdings in the company capital for workers' shares and on a pro rata basis with regard to company shareholding for general shares held (Article 8). Any of the above criteria would be valid insofar as the company interest is concerned, and the regulation should therefore be voluntary, favouring equality while at the same time allowing the company itself to decide which criteria most suits its needs.

Finally, doctrine has rightly criticised that the time periods allowed in law for preferential acquisition rights to be exercised are so long that they could undermine any share or holdings and it is therefore necessary to reduce those time periods to a minimum.

Article 7, despite its heading, does not exclusively serve to regulate preferential acquisition rights in the case of transfers, but also regulates the voluntary inter vivos transfer of company shares and holdings; thus for the sake of coherence, the heading for this Article should be amended to suit the actual contents covered.

Article 7. Voluntary inter vivos transfer of shares and holdings.

1.- Any holder of general class company shares or holdings, unless the Company Articles of Association specifically state the contrary, is free to transfer these either to shareholders or to third parties and any owner of workers company shares or holdings is free to transfer these to company employees holding a long term contract for an indefinite period, whether or not they already own shares in the company.
In both cases the person transferring the shares must inform the company, in writing and with guaranteed mode of receipt, of the number of shares or holdings they intend to transfer and of the identity of the person acquiring them. The company may only oppose the transfer if the limits imposed under Article 1 of this Law are surpassed. Any opposition shall be notified within a period of 7 days with immediate proposal of a shareholder, third party or the company itself as willing to acquire the total number of shares or holdings within the period of one month from the date that the intended transfer was advised.

2.- In all other cases of transfer of worker class shares or holdings, the person transferring these shall further inform the company irrevocably of the transfer price and conditions.
The company executive board will notify long term company workers holding contracts for an indefinite period within 15 days from the receipt of that notification. Any workers who do not own shares in the company may acquire them during the month following that notification. If, after that time period has transpired, none of them has excercised that preferential right then the shares or holdings may be acquired by workers who already own shares or, if not, by the company itself, within a period of 15 days.

3.- In the event that several people wish to exercise their preferential acquisition right, then the shares or holdings will be shared among them all equally, except where the Company Articles of Association set out other criteria in this regard.

4.- In the event that neither any long term worker holding a contract for an indefinite period nor the company itself exercises their preferential acquisition right as set out under Paragraph 2, the shareholder may freely assign the shares or holdings he or she owns, unless some other preferential acquisition right is set out under the Company Articles of Association .

5.- In any event, if nobody exercises their preferential acquisition right within a period of two months starting from the date that the shareholder advised his or her intention to transfer, then he or she will be free to assign the shares or holdings they own. If the

shareholder does not transfer these within a period of four months, then the proceedings governed by this Law must start over again.

<u>Amendments to Article 8. "Reasonable value".-</u>

The prices of company shares or holdings have been regulated by the Legislator since Law 15/86 came into existence. That Law provides that in the event of any discrepancy with regard to price this would be set at 75% of the estimated actual value according to either an expert appointed mutually by the parties or, if there is none, by the Judge (Article 9.). The purpose of this regulation seems obvious. The intention is to favour workers' acquisition of shares, to avoid speculation and to take into consideration the compulsory existence of an indivisible reserve that serves to determine the actual share value.

Since the current 1997 law was passed there is neither any reason for an indivisible reserve to exist nor for the shareholder transferring the shares or holding to only partially recoup the actual value of his or her contribution to the company assets. That is why the legislator amended the judicial regime and created a distinction between an intended transfer either as a purchase transaction or not. In the first case the legislator concludes that the price and any other conditions will be as agreed and communicated to the executive board by the shareholder transferring those shares or holdings. That regulation not only forbids negotiation between the person transferring the shares or holdings and the person acquiring them proposed by the company, as in the previous law, but further accepts that the price could be speculative. The price may only be fixed by mutual accord in the event that the transfer were for some other reason and, if none exists, then the price would be the actual price determined by an auditor. Law 44/2002 dated 22 November later amended this concept and included the reference to a 'reasonable price' instead of the actual price, the amount of which to be set by an account auditor other than the company's own auditor.

The regulation should be amended to provide shareholders more flexibility and allow them to offer shares or holdings to the company workers. The financial cost of doing so is often the reason hindering that access. The regulation could be amended by using the same criteria for determining the price and the transfer conditions as currently

set out under Article 8 but only as long as the parties or the Company Articles of Association do not provide an alternative.

> **Article 8.** Reasonable value.
>
> The price of any shares or holdings, method of payment and other conditions for the operation will, **unless there is an agreement or the Company Articles of Association provide otherwise,** be those agreed and communicated to the administrative body by the shareholder transferring said shares or holdings.
>
> If the proposed transfer is carried out either as a form of paid transaction other than purchase or free of charge, then the acquisition price would either be the price mutually agreed by the parties or **as set down in the Company Articles of Association, and** , if not, becomes the reasonable value of the shares or holdings on the day that the company administrative body was informed of the intention to transfer. That reasonable value is deemed to be the amount determined by an account auditor other than the company auditor and appointed for that purpose by the managers.
>
> The company shall pay auditor costs. The reasonable value set will apply to all transfers taking place within each financial year. If either the person transferring shares or holdings or the person acquiring them in the course of transfer transactions during the same financial year does not accept that reasonable value then a new evaluation may be carried out at the expense of that person or legal entity.

Amendments to Article 10 "Termination of the work relationship".-

This principle covers the event of the worker shareholder ceasing to be an employee and requires that person to offer his or her shares or holdings to the other shareholders and workers as set out under Article 7 and if nobody were to exercise their preferential right to buy, then they could remain as shareholders although the shares held then become general holdings.

The purpose of this regulation is to favour company workforce ownership and give priority to the workers, whether or not they are shareholders, for acquiring those shares or holdings. The legislator, however, is not very specific as he does not impose a set time limit within which this should take place and refers back to a value for shares and holdings in accordance with the actual value rather than the reasonable price and does

not, on the other hand, allow the shareholders to set the value themselves or to agree a specific price.

The proposed amendment to Article 10 is largely the same as that put forward by the **Confesal** judicial commission and aims to provide guarantees to all the parties concerned and to ensure that the regime for calculating the value of shares or holdings being transferred is flexible, in a similar fashion to the above articles.

This is, furthermore, not the only possible instance of compulsory transfer of shares or holdings on the part of a *workforce owned company*. Embargoes or seizure of a pledge comprising the shares or holdings may also mean that shares or holdings in the particular company come into the ownership of third parties without regard for the preferential rights of acquisition covered by this law.

The Law governing limited partnerships, given that this type of company is effectively a closed company, does provide under Article 31 for the possibility of the shareholders or the company taking the place of either the seller or the buyer, accepting all the conditions of the bid and the entire tender amount prior to the sale or assignment to the buyer taking place.

It is advisable to set down this measure as part of the Law governing *SOCIEDADES LABORALES*, particularly because the Law governing limited liability companies does not consider it as such and because it will therefore be easier to adapt the regime suggested under the LSRL to *SOCIEDADES LABORALES*, as long as there is a stipulation stating that this kind of substitution may be carried out by those persons having a recognised preferential right of acquisition under the Company Articles of Association for the particular type of share or holding concerned.

In order to include this regulation under the Article discussed here the article heading should be altered and replaced by a more inclusive term such as 'compulsory Transfer of shares or holdings'.

Article 10. Compulsory transfer of shares or holdings.

1. If a worker shareholder ceases to be employed by the company, the former should offer **(….)** his or her shares or holdings **within a maximum period of three months from the confirmed termination of that employee relationship,** as set out under Articles 7 **and 8.2** and in the event that nobody exercises their acquisition right, then he or she would continue as shareholder in the company but as a holder of general shares **(….).**

In the event that somebody does wish to acquire those company shares or holdings, whenever the shareholder, after ceasing to work for the company and having been duly advised by Notary of the requirement to do so, does not, within the period of one month, officially carry out the sale, then it may be awarded by the company administrative body, who will **assign the value thereof** over to that person either by judicial means or at the *'Caja General de Depositos'* or at the Bank of Spain.

2. The Company Articles of Association may set down special regulations to cover cases involving retirement or permanent disability of the worker shareholder, as well as for cases where the worker shareholder may be on extended leave.

3. In the event that an embargo has been placed on the company shares or holdings or a pledge being processed that had been set up with regard to those shares or holdings, then the provisions of Article 31 of the Law governing Limited Partnerships will apply, with the particular requirement that long term workers on indefinite period contracts but who are not shareholders are also notified and that the right to substitution provided for may be carried out by those persons who have preferential acquisition rights according to the Company Articles of Association.

Amendments to Article 11 "Transfer "mortis causa" of shares or holdings.-

Article 11 again sets out a preferential acquisition right, in the case of *mortis causa* inheritance, for worker class shares and holdings. It is therefore appropriate to amend this regulation adapting it in accordance with the changes outlined in the above points so that the value agreed with heirs or beneficiaries or the value as provided for under the Company Articles of Association applies, or if these are not available that the acquisition is carried out under the reasonable value, rather than the actual value, as the regulation currently states.

With a view to keeping the regulation flexible, a further suggestion is that it should not be compulsory to pay the amount due for those shares or holdings acquired as an immediate payment, if the parties concerned agree deferred payment or if deferred payment is provided for under the company Articles of Association.

Article 11. «Mortis causa» transfer of shares or holdings.

1. If a person who is either an heir or a beneficiary of the deceased acquires company shares or holdings due to inheritance then that person becomes a company shareholder.

2. Notwithstanding the provisions of the above paragraph, the company Articles of Association, in the event of the death of the worker shareholder, may acknowledge a preferential acquisition right for those worker category shares or holdings, by means of the procedure set out under Article 7 **and for the corresponding share value amount according to Article 8.2,** to be paid in cash, **unless an agreement or provision under the company Articles of Association states otherwise. Such preferential acquisition right must** be exercised **(…)** within a maximum period of **three** months, starting from the date the company was informed of the acquisition by inheritance.

3. If the heir or beneficiary works for the company under a long term work contract for an indefinite period then the preferential acquisition right under the company Articles of Association cannot be exercised.

Amendment to Article 12 "Administrative body".

This principle requests on behalf of the bearers of general category shares or holdings that they should be able to participate in the administrative body by the election of Board members according to proportional representation, as set out and governed by Articles 137 LSA and RD 821/1991 of 17 May regarding the appointment of members of the Administrative Board by Proportional Representation.

This regulation should be criticised in that it makes this system compulsory whenever there are general category shares or holdings.

There should be a proposal to remove this principle for several reasons. First of all, it makes no sense to have general category shares and holdings without a vote but to require that they be represented on the company administrative body. The proportional representation system for election is complex and costly for companies. It is imposed even against the will of the owners of this type of share or holding. The removal of this regulation would not prevent the shareholders of a workforce owned company from setting this system up on either a compulsory or a possible basis within the company Articles of Association. Furthermore, in the case of a worker owned Limited Liability partnership **(SLL)** the shareholders may always require it be applied even if it is not set down in the company Articles of Association, as long as they comply with the requirements and procedures set out under RD 821/1991.

For the reasons given above Article 12 should be repealed.

~~**Article 12.** Admnistrative body.~~

~~In the event that the company is governed by a Board of Directors, then the appointment of the members of that Board will necessarily be carried out by the proportional representation system governed by Article 137 of the Law of Limited Liability Companies and under the provisions which further develop that article.~~

~~If only worker category shares or holdings exist then the members of the Board of Directors may be appointed by majority.~~

Amendment to Article 13 "Challenge to Company Articles of Association".

This principle can also be left out. The first part of the principle is, of course, unnecessary. Any agreements reached by the general Board may be challenged if they are contrary to law, to the company Articles of Association or if they harm any benefit pertaining to any one or to several shareholders or third parties, or to the company interests. This regulation applies generally to trading companies (Articles 115 LSA and 56 LSRL) and it is not therefore necessary to repeat them in this law.

It does, however, make sense to retain the second part as it sets down a duty for the judges to cooperate with the SOCIEDADES LABORALES Register, consisting in the duty to inform that Register of any claim that exists whenever the decision in that matter might affect the capital shareout or if the company address changes and moves outside the municipality where it is registered.

This second regulation should be retained although it would be better placed under Article 4 as proposed which refers to the administrative register for SOCIEDADES LABORALES, specifically under paragraph 5, which existed before the duty to co-operate with the Companies Register.

~~**Article 13.** Challenging Company Articles of Association.~~

~~1. Agreements reached by Shareholders' meetings which are contrary to Law or which oppose the company Articles of Association or which harm the interests of the company to benefit either one or several shareholders may be challenged.~~

~~*2. If the challenged agreement affects the capital shareout or the company address is changed to outside the municipality, then the Judge hearing those proceedings shall notify the SOCIEDADES LABORALES Register of the existence of that claim and the grounds for the challenge, as well as of the ruling issued either upholding or refusing the claim.*~~

Amendment to Article 14 "Special Reserve".-

The existence of a Special Reserve no longer makes sense, since its indivisible nature has ceased to exist, as we saw at the start of this review. There is nothing to justify *SOCIEDADES LABORALES* having to set up further reserves for the purpose of meeting losses incurred as a result of its business activity.

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It is certainly true to say that setting up or increasing reserves as a measure serves to strengthen the company solvency position, its stability and continuity; it is a convenient and even a necessary company policy; that does not, however, mean that it should be made obligatory by law but rather that the shareholders should decide whether or not it is appropriate and who would take the relevant decision when drawing up the company Articles of Association or when they decide how the financial year profits are to be distributed.

It would be different if the special reserve were to be used to facilitate the addition of further workers as shareholders, and this could possibly serve to reduce the implicit cost for a worker to do so. Distribution in that manner, which would indeed justify the existence of a special reserve, does not have to be exclusive and the reserve could also serve to improve the company self-financing position by being invested in company business. This would effectively restrict the tendency of many *SOCIEDADES LABORALES* and many small and medium sized companies to pay out most of the business profits to its shareholders, either in the form of employee salary payments or as dividends.

The proposal of the Confesal Judicial Committee suggesting a reduced periodic assignation to the special reserve also seems acceptable, and therefore a set aside amount equivalent to 10 per cent of the net profit for each financial year would no longer be compulsory whenever the amount of the Special Reserve Fund matches the subscribed company capital amount.

Article 14. Special Reserve. 1. In addition to any reserves required either by law or under the company Articles of Association, SOCIEDADES LABORALES are required to set up a Special Reserve, setting aside, at least, 10 per cent of the net profit for any particular financial year **until the amount of the Fund matches the amount of subscribed company capital.**

2. The Special Reserve Fund will be used to help workers become shareholders in the company, for investments in company business or to compensate any losses if no other sufficient reserves are available for that purpose.

Amendments to Article 15 "Right to preferential share acquisition".-

This principle governs instances of capital increases involving new shares or holdings. The main purpose is to acknowledge the preferential right to acquisition or absorption on the part of existing shareholders, and to assign the remaining shares or holdings to company workers according to the preferential ranking set out under Article 7.

The first amendment required by that article is a change to its heading, in that the article not only covers the preferential share acquisition right but also preferential absorption of shares by shareholders, and we therefore recommend that this principle be entitled: "Preferential rights regarding capital increases".

The article starts out acknowledging the fact that all increases in company capital should abide by the existing ratios of shares or holdings. This general principle could be corrected by leaving out the preferential right, as suggested under paragraph 4 of this article with regard to Articles 159 LSA and 76 LSRL.

The regulation could be rendered more flexible if it stated from the beginning that the increase in capital did not have to be proportional whenever that increase in capital was only intended to bring the company capital up to the capital amounts set under Articles 1 and 5.3 of the Law.

Furthermore, paragraph 3 of the article referred to here should be corrected where it refers to workers, whether or not these are shareholders. The reference should be to long term workers with contracts for an indefinite period and not to all workers in the

event that, as proposed, only the former are given preferential acquisition rights for worker owned shares or holdings.

Paragraph 4 should also be amended for the same reason where it refers to the "Plan for workers to acquire shares or holdings" should state by workers holding long term contracts for an indefinite period.

This principle should further correct the reference in line one of paragraph 4 to "preferential share acquisition right" instead of preferential right, whether that is to share acquisitions or taking over holdings.

Article 15. Preferential rights in capital increases.

1. Any increase in company capital involving new shares being issued or the creation of new company holdings, should abide by the existing ratios between the different categories into which the company capital is divided, **except when the company capital is being increased for the purposes of the provision set out in Article 1.3.**

2. The owners of shares or of holdings pertaining to any of the categories shall have preferential rights to acquire or take on any new company shares or holdings for that particular category.

3. Unless there is a decision to the contrary taken at the Shareholder's Meeting where the increase in company capital is adopted, then any shares or holdings which remain either unsubscribed or are not taken up by the shareholders for that particular category will be offered to any workers holding **long term contracts for an indefinite period** in the manner set out under Article 7.

4. Any exclusion of the preferential right will be governed by the respective Law, according to the type of company concerned, although whenever that exclusion affects worker category shares or holdings then the amount of the premium will be freely decided by the Shareholders' Meeting as long as that same Meeting approves a Plan for acquisition of shares or holdings by company workers **holding long term contracts for an indefinite period** and if the new shares or holdings are intended to comply with the Plan and the prohibition on transfer during a five year period is imposed.

Amendments to Article 16 "Loss of Classification".-

In compliance with previously proposed amendments, the sole grounds for loss of classification as a *workforce owned company* would be that the limitations imposed by the law governing that company and which have been set down under proposed Article

1 had been surpassed, i.e. if the majority of voting rights were held by workers not in possession of long term contracts for an indefinite period and that any one shareholder held more than a third of those rights or 50% or more in the case of public companies, not-for-profit organisations or risk capital companies.

Setting up a Special Reserve fund, while it reinforces company solvency, could be encouraged as we have outlined, but the lack of such a fund or insufficient amount thereof cannot justify the loss of classification as a workforce owned company.

Furthermore, and in order to be systematic, the provisions of paragraph 16 of this article come under the following article regarding the requirements for entitlement to tax benefits.

Article 16. Loss of classification.

1. If the limits set out under **Article 1 of this Law are surpassed** this would be legal grounds for loss of classification as <*Workforce owned company*>.

2. After ascertaining that legal grounds for loss of classification exist, the Ministry of Work and Companies or the corresponding administrative body in the competent Autonomous Community and once the time periods set out under this Law for such grounds to cease to exist have expired, then the company will be required by law to correct those grounds within a time period of no more than six months.

3. At the end of the time period set out in the paragraph above, if the company has not removed the legal grounds causing loss of classification, then the Ministry for Work and Companies or the corresponding body within the competent Autonomous Community will issue a decision stating that said company has ceased to qualify as a workforce owned company and ordering it be removed as such from the Companies Register for SOCIEDADES LABORALES. The appropriate entry will be noted and certification both of the decision and of the removal from the corresponding Companies Register will be issued so that the appropriate margin note may be made against the company entry in the Companies Register.

~~4. If a Workforce owned company loses its category within less than five years from the date of incorporation or transformation then that Workforce owned company will lose its tax benefits status. The corresponding procedure will be carried out according to the provision set out in the regulation referred to under the second final provision of this Law.~~

Amendment to Section II. "Tax Regime".

The numbering of articles according to systematic, logical and judicial technical criteria is amended. Effectively, it is deemed more appropriate to set out the different requirements for a given tax regime to apply within the first Article relating to tax regime and then to list that regime afterwards. The requirements will therefore be given under Article 17 and the tax regime under Article 18. For clarity and judicial safety the latter will further differentiate between those relating to Capital Gains tax and Documented Judicial Acts tax (**ITP/AJD**), which remain basically the same, although with some amendments, from those put forward with regard to the Company Tax **(IS)** and which now form an integral part of the law. A new Article, No. 19, is further added, covering the regime for workers who invest in the company and for government attorneys.

The amendments to current principles in force proposed are as follows:

Amendment to Article 19 "Tax Benefits"

The proposal involves adding a paragraph to Article 19 and changing the heading, in order to include the tax benefits set out under the Company Tax and to include the freedom to amortise. Paragraph 1 only lists those relating to ITPAJD, and the rest of the paragraphs cover benefits involved in Company Tax.

The first criticism of Article 19 of the current law is that it does not comprise a tax regime, and is therefore a lost opportunity to effectively stimulate this type of company and the objectives it achieves[28]. The second criticism, which is that it is technically weak, in that there are clauses that overlay its effects, lead to confusion, etc. The third, and probably the most important criticism, is that it does not meet the aims

[28] The fact that it does not constitute a tax regime is pointed out in DE LA PEÑA VELASCO,G. "Tax regime for Worker Owned Companies" *"Régimen tributario de las Sociedades Laborales"*, in AAVV "Judicial Regime for Worker Owned Companies" *Régimen jurídico de las Sociedades laborales (Law 4/1997)*, *Tirant lo Blanch*, 1997, page 176; VALPUESTA GASTAMINZA,E./BARBERENA BELZUNCE,I. "Worker Owned Companies" *Las sociedades laborales. 'Company, worker and taxation aspects'*. Aranzadi.pp. 207 further states, that "…said law represents a lost opportunity to order the setting down of a tax regime for worker owned companies which would be more in line with the intended aim (of helping to promote and develop that type of company, as set out in the Summary of Grounds), and also with the grounds justifying the law itself (the overall company aim over and above financial purposes, involved in the creation and existence of such companies, also set out under the Summary of Grounds)."

set out as its purpose under the Summary of Grounds: of encouraging “the company purpose, over and above any financial purpose, involved in its creation and existence.”

The technical weaknesses are as follows:

Under paragraph A) of this principle, the exception is set out for Company Tax Operations, dealing with the incorporation, capital increases and transformation of already existing Spanish Public Limited Companies (SAL) to Limited Liability Partnerships (SLL), as well as adjusting current SALs to the principles set out under this Law. Two matters concerning this principle are:

In the first instance, it would be a good idea to include amounts provided by shareholders to make good losses incurred by the company under the exemption, given that this has the same financial purpose as an increase in capital[29]. One could, furthermore, specify that the principle should include companies incorporated as a result of mergers. The reason for this is that although Article 45.I.B. 10 of TRITPAJD makes mergers exempt, this is with regard to mergers meeting the requirements of the special regime regulated under Company Tax. Therefore, any mergers which for some reason do not meet a particular requirement of that regime would be covered under this point.

Secondly, transformation of companies is not taxable under Company Operations per se, nor under AJD, due to the ruling of STS[30] dated 3 November 1997[31], and must surely be a mistake in that law[32]. And besides, adjusting a company to the new law would not constitute transforming the company but rather amending its Articles of Association and that could indeed come under this last category, and would not be exempt under it.

That is why the 99% discount according to the provisions of paragraph C) of this Article, in AJD for the transformation of SAL (Spanish Public Limited Companies) into en SLL (Limited Liability Partnerships) or viceversa is rendered pointless. However, if a company that is not workforce owned is transformed into a workforce owned company then it could be subject to AJD because this is not technically a transformation

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[29] VALPUESTA GASTAMINZA,E./BARBERENA BELZUNCE,I. . “Worker Owned Companies” (*Las sociedades laborales.) ‘Company, worker and taxation aspects’.* Aranzadi, page. 214 makes this point.

[30] STS: Supreme Tribunal Ruling

[31] RJ 1997, 8252. Due to the fact that it is incompatible with Directive 69/335EEC, as also stated by the TJCE in its Ruling dated 5 March 1998, Solred, as. C-347/96.

[32] DE LA HUCHA CELADOR ,F “Tax benefits for Worker Owned Companies” *“Beneficios fiscales de las sociedades laborales”*,, in AAVV *Comments on the legal regime for Trading Companies, Volume XV, Worker Owned Companies*, Civitas, 2000, page. 337, believes that this may actually be a slip and a technical error. See on this point, CALVO VERGEZ,J. in “Worker Owned Companies: tax considerations” *“Sociedades laborales: consideraciones tributarias”*, in the VVAA *Tax matters for legal entities in Company economics*, Thomson civitas, 2005, page 382 note 442.

(Art. 4.4. Law 4/97), but rather an amendment to the company Articles of Association. It is perfectly logical and appropriate, on the other hand, to allow loans provided for the purpose of investment in fixed assets necessary to meet company aims and objectives to be fulfilled to benefit under ADJ.

Finally, in the case of the 99% discount under the Taxable Asset Transfer *(**T**ransmisiones **P**atrimoniales **O**nerosas)* for the acquisition of parts of the company which employ most of the workers, it should be said that most probably, the principle will only actually affect property. VAT is payable on the acquisition of parts of companies and not Capital Gains or Asset Transfer taxation (ITP/TPO), meaning that it would therefore be compatible with Judicial Document Tax (AJD), for which neither exemption nor discounts are set out.

If, however, the transfer complies with the requirements of Article 7.1 LIVA (basically that the total amount of the company assets is transferred), then it would not be liable for that tax, nor for TPO, except with regard to fixed assets. If, on the other hand, those requirements are not met, then VAT is chargeable. In that event, TPO would only apply to fixed assets exempt from VAT, where appropriate, for a second or subsequent transfer, etc., unless the right to that claim has been waived (Articles 20.1.20 and 20.1.22 LIVA). Thus, the effect of the discount regime is particularly limited[33].

It is, furthermore, hard to understand why the purchase of this kind of fixed asset should be discounted while others that might be necessary for the company to start up are not. In effect, if this point in law did initially particularly play an important part with regard to restructuring of companies in crisis, it nowadays has to do particularly with a very specific role in setting up companies: it permits self-employed workers to pool their money and allows small companies and family capital to be inherited. What this means is that, particularly since the reform brought in under Law 4/1997 allowed SLL, this has generated SOCIEDADES LABORALES which did not evolve from a company undergoing a crisis but rather that have effectively grown out of sole trading companies[34].

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[33] This is set out by CALVO VERGEZ,J. in "SOCIEDADES LABORALES – Tax Considerations" *"Sociedades laborales: consideraciones tributarias",* in the VVAA "Tax liabilities for Legal Entitities as part of Company Finances" *Fiscalidad de las Entidades de la Economía social*, Thomson civitas, 2005, page. 388.

[34] See on this subject PEREZ PEREZ "The new Spanish Public Limited SOCIEDADES LABORALES - SAL, between encouraging employment and salvaging companies undergoing difficulties" *"Las nuevas SAL, entre el fomento del empleo y el salvamento de las empresas en dificultad", Actualidad Financiera*, 1988, vol. I, page. 850; "ESCUELA DE ESTUDIOS COOPERATIVOS,"The Status and perspectives on

The proposal is therefore to exempt the purchase of fixed assets initially necessary for a company to start up, for a period of two years from the date of incorporation or classification. There is an imposed condition that these must be kept as part of the Company assets for a period of four years from the date of acquisition, as a mechanism to ensure both that the company aim which produces profit is protected and in order to avoid any possible fraud. That mechanism is, on the other hand, one that is frequently used throughout the rest of the tax system where tax benefits are linked to the acquisition of assets. The time period set – 4 years – furthermore coincides with the current period for prescription.

The text would therefore read as follows:

"**Art. 18. Tax benefits for SOCIEDADES LABORALES.**

SOCIEDADES LABORALES meeting the requirements set out under Article 20 will enjoy the following tax benefits:

1. The following operations are exempt from either Capital Gains Tax *(ITP - Impuesto sobre Transmisiones Patrimoniales)* or Documented Legal Proceedings *(AJD - Actos Jurídicos Documentados)* other than the fixed basic amount of AJD:

   a) Incorporation, merger, capital increase and funds provided by shareholders to make good losses incurred by SOCIEDADES LABORALES,

   b) Amendments to the company Articles of Association or transformation to become a Spanish Workforce Owned Limited Company (SAL) or a Workforce Owned Limited Partnership, or in order to adapt the Articles of Association to this law,

   c) Setting up loans, including those comprising obligations and bonds, and employee convertible bonds, where the amount raised is used to acquire fixed assets so that the SOCIEDADES LABORALES may operate as businesses.

   d) The acquisition of property during the first two years that the workforce owned company is in operation, starting from the date of incorporation or qualification. The exemption only applies for as long as those properties continue to form part of the company assets for a period of at least four years from the date they are acquired.

This principle should, furthermore, include the benefits put forward under Company Tax *(Impuesto sobre Sociedades).* At this point in time, the only benefit set out under Company Tax regulations is the possibility of amortisation for fixed assets acquired during the first 5 years from the date of qualification, and this is set down under Legislative Decree 4/2004, which governs Company Taxation.

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worker owned companies in Spain" *"Situación y perspectivas de las sociedades laborales en España",* Sociedad Cooperativa, No. 9, October 2004, pages 6 onwards.

We, however, believe that the incentives contained in this law could be used very effectively to improve results obtained by worker owned companies insofar as productivity and company cohesion are concerned, leaving it up to these Companies themselves to decide how best to make use of the tax benefits.

First of all, as an incentive of the type which could be included among relating to incorporation and start up, we would propose that part payments should be exempt for the tax years which began during the first two years counting from the company date of incorporation, and thereby setting down a regime which is similar to that provided for New Company Limited Partnerships under D.A.13th in Law 7/2003.

Secondly, the permanent regime or regime for an indefinite period proposed for these companies has to do particularly with achieving the company aims, especially company self-financing and workers contributing to the company capital, and coordinating the two: there is an incentive to self-finance, but this is clearly linked to the company activity with a view to facilitating workers' contribution to company capital. This is clearly stated, both within the requirements for eligibility and in the way the incentives are designed.

Thus, the requirement set out under proposed Article 17.2 – setting aside 10% of profits to the Special Reserve Fund *(FRE)* – is an attempt to ensure that the company concerned will have in turn undertaken self-financing, in addition to any state financing which may mean that tax benefits apply for the financial years it is received. Thus, in order to receive tax benefits amounts must have been added to that reserve in the amount of the benefits during the financial years they apply. This guarantees, on the one hand, that the liquidity obtained by receiving tax benefits is not handed out as dividends, but that it remains within the company. On the other hand it means that these amounts will remain in a fund which is partly intended to facilitate worker access to investment in company capital. On that basis, therefore, that measure manages not only to facilitate investment, but also the said shareholding.

There would be two tax benefits as proposed: deductions due to reinvestment of profits and freedom to amortize.

Reducing the Taxable Basis by the amounts effectively invested during the financial year into fixed assets for use in the company business (not mere company investments) as a percentage amount which attempts to mirror worker shareholdings in

company capital, which is a similar mechanism to the French system of rewarding investments with a percentage of the amounts set aside for worker profit share[35].

Thus this mechanism, which is specifically intended to provide investment, is one of several tax benefits (Article 237 dupl.- A of French General Taxation Law ("*Code General des Impôts"*) provided with relation to systems enabling workers to share in company profits. Companies can pay into a fund for investment purposes at a percentage of the amount paid voluntarily by the company out of profits (amounts paid in addition to the compulsory amount paid into a special company profit reserve fund, or to purely voluntary amounts, such as the *interéssément*, or the *abondement*). The percentage may vary from case to case but tends to oscillate between 50%, in most cases, and 100%, for cooperatives[36]. One should bear in mind the fact that most profit shares are used to buy shares in the company and therefore serve to facilitate worker access to company capital. This provision ends up counting towards the Taxable Base *(BI)* amount if it is not used within 2 years either to acquire or to create fixed assets.

Effectively, as in the case of that provision, the proposed deduction is actually a measure improving tax liability for investments proportionally with regard to the

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[35] French regulations provide the following systems for profit share:

1) "Share" (French: *"Participation"):* Differentiated payout of profit sharing, compulsory for all companies with more than 50 employees since 1994 (it previously applied only to companies with more than 100 workers), and first implemented in 1967. Profit share is calculated beforehand and paid into a **special reserve fund**. It is a "broad-based" plan: aiming to cover all workers who have been with the company for more than 6 months. There are limits on the amounts involved.

2) "*Interessement*": is voluntary, and consists of a share in profits in cash. Tax benefits apply if the share is frozen in a company savings fund and paid into a company savings plan (*plan d'epargne d'enterprise, PEE*), where it is held blocked for 5 years. It must be set up by collective agreement.

3) Company savings schemes (PEE): Permit access to shareholding by waged employees and mean the company's own funds are strengthened. The Fund can accept:

i. Voluntary worker's contributions, either shareholdings or *interessement* (of an amount up to 25% of gross salary)

ii. Company shareholdings, free of tax and social security ("*abondement*")

iii. Shares offered by the company to its employees at a 20% discount. In order to be tax free the shares must remain in the Fund for a period of 5 years.

[36] Effectively, amounts paid in to the *RSP* over and above the compulsory amount and which are deductible from the Tax Basis, give rise to the possibility of adding to funds as **investment provision** equivalent to 50% of the amounts thus provided. The same occurs with regard to amount provided by the agreement of *intéressement*. The amount provided in this way is also intended for other purposes: A) Limited liability partnerships with workforce shareholding may set up tax free investment to an amount equivalent to 50% of the sums set aside to the special reserve fund for shareholding for that financial year and which have been deducted from the basic taxable amount (BI). This amount increases to 75% if companies pay an amount into an indivisible reserve equivalent to 25% of the special reserve fund. If the company is wound up then that fund may only be shared out to the owners of work shares. B) Workers Production Cooperatives : 100% will be paid to the investments provision fund.

amount that the company sets aside as funds enabling workers to accede to the company capital. The structure itself, however, has had to be altered, because for the sake of simplicity and setting up a regime that would not be too costly either financially or in management terms, there is no obligation on *worker owned companies* to create either a mechanism such as the Special Reserve for investment in the company or a company savings plan. It should be noted that said regime in France is only compulsory for companies with over 50 employees, whereas Spanish *worker owned companies* have far fewer employees on average. What has actually happened is that although there are more of them than before, these are actually smaller since they have been allowed to be Limited Liability Partnerships (the average size in 2004, was 3.5 partners and 6 employees[37]). They are essentially the same, however, and have similar financial effects: in the short term there is no difference between setting aside an amount during the financial year in which the profit was created, or deducting the amount of that benefit from the basic taxable amount. The investment must, additionally, take place within a period of two years. Furthermore, the clauses regarding the percentage payable (dependant on the number of employee shareholders) on the one hand and the amount having to be set aside into a reserve fund partly subject to employees being able to acquire shares in the company, on the other, are of a similar weight to the relationship under the French regime between the amount of the set aside and the amount having to be paid into the Special Reserve fund (REP).

This method will enhance company self financing by reinvesting company profits, while at the same time linking the amount involved to the percentage of company employees holding shares in the company. We consider that this provides a very strong incentive for the *workforce owned company* to be more inclined to enable its employees to accede to the company capital.

The ability to set off these amounts against tax, additionally, though not a net tax saving per se, but rather a deferred tax payment, is one of a series of tax mechanisms that have provided the greatest incentives for Limited Partnership company (SL) start ups. The fact, however, that this can only be applied to items acquired during the first five years renders it insufficient: this is a benefit which provides greater liquidity in the

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Companies may additionally pay 25% of the supplementary amounts paid to PEE *("abondement")* into investment provision funds (Article L443-1-2 work code). The percentage becomes 50% for payments made in bonds providing access to company capital.

[37] Vid. "Status and perspectives of worker owned companies in Spain", *"Situación y perspectivas de las sociedades laborales en España",* Magazine *'Sociedad cooperativa'*, No. 9, October 2004, pages 8 and 9.

first few years following the investment, thereby ensuring that the investment is more secure and decreasing the risk and providing an effective incentive.

It is also important to realise that both of these benefits are subject to an equivalent amount being set aside into the Special Reserve Fund. The purpose, of course, is to guarantee that the amount of those benefits should remain within the company and be used for investment Those investments, in turn, provide a solid foundation for possible future increases in company capital which can be used to facilitate employee access to company capital, given that more shares and holdings are made available. As for setting off the amount against tax, this aspect is particularly important in that, as we have pointed out, the company is only effectively able to delay a tax payment, whereas the amounts set aside into the Fund during the financial years that the benefit is applied are permanent.

We therefore propose an amendment along the lines of Article 11.2.a) of TR 4/2004, governing Company Tax, as follows:

"**Art. 11. Corrections to the amount: setting against tax.**

…

2. The following may be set against tax without limitations:
   a. Both tangible and intangible fixed assets of *worker owned public companies* and *worker owned limited liability partnerships* necessary in carrying out company business, ~~and acquired during the first five years from the date that the company gained that category~~ **in the terms set out under Article 20.2 of the law governing company taxation** …."

Then add paragraphs 2 and 3 to proposed Article 18:

"**Art. 18. Tax Benefits for *worker owned companies.***

Worker owned companies meeting the requirements set out under Article 20 will enjoy the following tax benefits:

….

2.They will not be obliged to make part payments as referred to under Article 38 of Legislative Decree 4/2004, governing the repealed text for Company Taxation, on account of payments made corresponding to the tax periods starting within the first two years either since company start up or since it qualified for this category.

3. For the situation covered under Article 17.2, further additional incentives may apply:

a) Any profits reinvested in company fixed assets may be deducted from the Basic Taxable Amount for the financial year in which they were made, as long as these are reinvested in company fixed assets within a time period of no longer than two years from the end of that financial year. The percentage of that deduction will be that percentage amount calculated by dividing the total number of hours per annum of work carried out during that financial period by the workers owning shares in the company, by the total number of hours per year worked both by employees owning shares in the company and long term workers on indefinite period contracts.

   An amount equivalent to the deductible amount must be set aside into the Special Reserve Fund governed under Article 12 of that law, either during the financial year in which the deduction is applied, or within the two years following.

b) The amount relating to tangible and intangible fixed assets may be claimed against tax liability without restriction, as long as an additional sum is set aside and paid into the Special Reserve Fund, as provided for under Article 12, in an amount equivalent to the extra costs deemed deductible according to the amount of tax benefit claimed for in the company accounts.

As for the type of taxation involved, there are several reasons to justify setting this at 20% for the situations provided for under proposed Article 17.3:

Firstly, the tax amount payable by Small and Medium sized companies (PYME) will continue at 25% for the first period, as far as one can tell from the proposed reforms to Spanish Withholding Tax (IRPF) currently before Congress. Thus, any Limited Partnerships (SL) which, as well as any type of company which has most of its company capital (or at least most of the voting rights) in the hands of employees, and which additionally has a plan for workers to accede to the company capital, for which at least 25% of the Special Funds is set aside, carry out much more intensive company roles that other small companies. For that reason a tax rate of 20% would seem fair and adequate.

Secondly, it is a strategy to provide incentives along the lines recommended by the European Commission in their 2002 communiqué, in that the type of special duty payable is linked to a system of worker participation which fulfils the principles set down in that Communiqué. Such plans, according to the Commission, are of the type (paragraph 5.1 Development of an environment which favours financial participation) that "…it would be important for the Member States to make an even greater effort to create a judicial and taxation framework to favour …".

It further states that "…bearing in mind the provision of the Treaty with regard to **State aid** and European Union policies regarding harmful taxation involvement. In this regard, **the general principles for financial share in the company as set out previously serve can be followed and serve as guidelines."** The content of that Communiqué is very useful because it sets out quite clearly that any plans which comply with the principles laid down, such as the plan proposed here, would be deemed to be "reasonable", in the sense that they would adequately meet the European Community objectives, if they were assessed as State aid to support the tax incentives linked to the plan.

As for the fact that the measure must necessarily be proportionate, there are two aspects to consider:

The first aspect has to do with the fact that an amount set aside and paid into the Reserve Fund implies to a certain permanent reduction in company assets as well as not being able to be shared out as dividends. One should point out, in that regard, that when that type of tax deduction amounts to a five percent reduction then only half of that amount has actually already been "donated" to the employees (in effect, 2.5% of annual profits will be allocated to the elements of that plan) and double the amount (10%) set aside into the reserve fund. Therefore, by reducing the tax rate in this way the State would in effect be making a contribution of 2,5% of taxable profits. The remainder of that amount, however, could not be shared out as dividends either, thereby rendering the company less attractive to their capital investors, given the reduced immediate return on investment. The company is therefore burdened with a competitive *handicap* and this fact justifies the intervention of the legislator in order to correct the market fault.

The second aspect is that, despite the fact that 75% of the Fund can immediately not be shared out and that shareholders permanently lose 25%, the actual amount being set aside does not constitute a tax deductible cost. It only effectively becomes a cost when it finances either the acquisition or subscription of shares by employees (proposed Article 18.5). Setting aside these amounts therefore actually increases the Taxable amount and clearly penalises that type of company.

The reason for the decision to apply a special tax rate rather than making the amounts set aside to the Fund tax deductible, either as a whole nor in part, is in order to avoid having to set up a regime that would necessarily be more rigid and future oriented, comprising requirements that must be met for such set aside amounts to be tax deductible. This is an attempt to keep the tax deductible element just to amounts that are

effectively set aside for that purpose (which can exceed 25% of the fund) , during the tax year in which these become part of the employee's assets, in a similar fashion to the regulation regarding tax payments due on company contributions to pension funds (Article 19.5 TRLIS).

Reducing the tax rate payable does mean, however, that one can to some extent benefit companies that choose to set such a scheme from the start as long as the scheme as set up under the Company Articles of Association contains conditions that guarantee its stability. The incentive is therefore for **setting up** the Reserve Fund and the share acquisition plan.

We would therefore propose adding a paragraph 4 to proposed Article 18, along the following lines:

"**Art. 18. Tax benefits for *SOCIEDADES LABORALES*.**

Workforcer owned companies that comply with the requirements set out under Article 17 will enjoy the following tax benefits:

….

4. A tax deduction of 20% will apply to SOCIEDADES LABORALES which comply with the requirements set out under Article 17.3."

Finally, in order to encourage employees to participate in company profits in the form of shares handed out or assistance with share acquisition then the secondary effect arising from Article 14 and 15 of TRLIS must be avoided and therefore any losses arising from such handovers or financial assistance should not qualify as a deductible cost. In the case of share handover the company must, furthermore, include any difference between the value of the shares handed over and the market value within its basic taxable amount. We therefore add a further paragraph 5 to Article 18 that applies without any requirement involving the Special Reserve Fund, given that neither is it a matter of penalising activities intended to finance worker share holdings separate from a preset plan nor companies that did not set out such a Special Reserve Fund within their Company Articles of Association.

"**Art. 18. Tax benefits for *SOCIEDADES LABORALES*.**

SOCIEDADES LABORALES meeting the requirements set out under Article 17 will enjoy the following tax benefits:

….

5. Any handover of company shares or holdings, either directly or by means of share options or any other legal instrument, to long term workers on permanent contracts which is either free of charge or at a price below market price, will not be considered as a donation, as long as it relates to a company payment policy set out within a worker share or holdings acquisition scheme covering everyone in that category and abides by the limits for capital holdings set down under Article 1 of this Law.
In the same way, any amounts paid by the company in order to facilitate employee share or holding acquisition by those same workers will be treated as tax deductible."

Amendment to Article 20 "Requirements"

As already stated, we would move the contents of this article to Article 17, initiating the Section of this law corresponding to tax liability. As far as the content itself is concerned, let us list separately the requisites it sets down:

A) Classification as "Workforce owned company"

In effect, in order to be eligible for the tax benefits the company would have to attain that classification and not to have incurred any of the legal grounds for losing that classification, as set down under current Article 16 of Law 4/1997.

In the current draft those grounds are:

1) Exceeding the limits of Articles 1 and 5.3:

Article 1 sets down a double limitation, with regard to employee share of company capital:

i. That the majority of company capital should belong to employees who are paid personally and directly for work they carry out in that company, and with which they are permanently employed on an indefinite basis.

ii. That the number of hours per annum worked by long term employees on indefinite period contracts who are not shareholders may not exceed 15 per cent of the total number of hours per annum worked by the workers who are also shareholders. If there there are at least twenty five employee shareholders, then that percentage may not exceed twenty five percent of the total number of hours per year worked by the employee shareholders. Workers on specific length contracts will not be taken into account in order to calculate these percentages.

Article 5.3 sets down: "No shareholders may own either shares or holdings comprising more than one third of the company capital, other than in the case of *worker owned companies* in which either the State, Autonomous Communities or public companies or any one of these are a shareholder. In those cases the shareholding of the public body may exceed that limit, but may not exceed 50 per cent of the company capital. Not-for-profit or other similar organisations may also hold such a percentage."

2) Whenever no funds are set aside to the Special Reserve Fund, or if those amounts set aside are either insufficient or inappropriately used.

Those articles, then, have been amended under the proposed changes and the number of hours per annum worked by long term employees on indefinite period contracts with regard to those worked by workers who are shareholders has been left out. Furthermore, the failure to set aside to the Special Reserve Fund no longer implies loss of classification. Only one ground therefore remains, which is exceeding the limits for controlling the company, set out under proposed Article 1. It therefore becomes necessary to make the appropriate adjustments and alterations to tax law and we should refer to the remaining requirements that are compulsory under current tax legislation.

First of all, it would seem logical to require that in order to enjoy any tax benefits made available to any particular type of company in law – in this instance to *worker owned companies* – then the company must have a legitimate claim to classification as that type of legal entity. We would therefore suggest that Article 17 should be retained as a requirement for classification as *workforce owned company*

It would, however, never be possible to comply with that requirement if the company is being incorporated, in that the liability to taxation for company trading arises from the Deed of Incorporation (Article 93.1 of RITPAJD), and the deed itself must be presented in order to apply for classification (Article 2.2. Law 4/1997). It would therefore be advisable to provide for this to take place in a backdated fashion, by applying a temporary exemption and allowing a period of time for the actual classification procedure to take place.

One needs to bear in mind that the way this is currently drafted, the effects of losing that classification, by virtue of the current provisions and those under proposed Article 16.4 of the law, arise as follows: if the company loses its classification during the first 5 years of its existence, then the loss of entitlement to receive the tax benefits is backdated. It would therefore appear that the company would have repay these amounts.

On the other hand, after that initial five year period and by virtue of current Article 20, the company only has to qualify for classification in the tax year that it applies (as well as meeting the remainder of requirements) in order to enjoy the tax benefits. In the event, furthermore, that it did lose its classification, it would only be deprived of tax benefits into the future[38].

[38] See on this subject, VALPUESTA GASTAMINZA,E./BARBERENA BELZUNCE,I. Worker owned companies, (*Las sociedades laborales).* Company, Workforce and Taxation Aspects *Labor*Aranzadi.Pages 208 onwards.

As a principle, it appears logical to emphasise the need to comply with requirements for classification as a workforce owned company within the first 5 years with regard to any tax benefits, in that the current tax benefit provisions particularly refer to the company start up and to providing an incentive for setting up this type of company. The clause is technically weak, however, because it could raise judicial doubt and would surely do so, as we shall see hereafter, with regard to the tax regime that we are proposing. It specifically shares the same problem as all of Article 20: the matter of whether or not this also applies to tax benefits not set down under Law 4/1997 i.e. the right to apply tax deductions according to the provisions of Article 11 of TRLIS. This is a particularly unwelcome uncertainty if we consider that Paragraph 4 of Article 16 and Article 11 of Company Tax Law both apply to the same time period and this gives the impression that there is a particular period of time which tax legislation has to protect.

We therefore recommend a two-tier amendment:

Firstly, that current Paragraph 4 of Article 16 be dropped. It makes no sense for a regulation which is obviously a taxation measure to appear outside of the Section which deals with the tax regime.

"**Art. 16. Loss of classification.**

….

~~4. Loss of classification within five years from incorporation or transformation will mean that the Workforce owned company loses the right to taxation benefits. The corresponding procedure will be amended according to the provisions contained in the regulation referred to under the penultimate provision of this Law."~~

Secondly, to amend the heading and content of Article 20. A), which then becomes 19.1. and to use the following wording:

"**Art. 17. Requirement for eligibility for tax benefits**. In order to enjoy the tax benefits set out under Article 18, *SOCIEDADES LABORALES* must comply with the following requirements:

1. Classification as "*Workforce owned company*" at the time the tax becomes due. This requisite could be complied with later if at that point in time the company actually does meet the requirements for classification and as long as the classification is applied for within a period of no more than 3 months. The company must continue to qualify for at least 5 years from the date of incorporation or transformation in order to continue to enjoy the tax advantages it receives during that time."

…"

As for the grounds for loss of the tax benefits regime described under current Article 16, we consider with regard to the proposed wording that the amendments proposed which substitute the wording 'majority of capital' with the 'majority of voting rights', as well as including risk capital companies within *SOCIEDADES LABORALES* shareholders, become irrelevant with regard to trying to decide whether or not it is appropriate to apply the tax regime. These are changes that have a profound effect on the effective type of company but do not in any way change its characteristics. One could perhaps say that they serve to highlight the fact that the company is run by the workers themselves, in that they specify that the majority of voting rights lie with the workers.

The set aside to the Special Reserve Fund can be analysed in the same fashion. Basically, setting aside 10% of profits to a Special Reserve Fund does not, at this point in time, have any specific bearing on the tax regime, as it is subsumed into the requirement provided for under paragraph B) of Article 20, which imposes a set aside of 25%. One can also, additionally, point out that there is no taxation counter-provision at all for such a set aside, despite the fact that it represents a substantial *handicap* to the company concerned, in that it effectively reduces the amount of profit which can be paid out to shareholders and thereby affects company profitability, making it harder to attract investment. So, as a matter of principle and except for the points noted below, removing the requirement to set aside 10% of profits to the compulsory Reserve Fund should not constitute an obstacle for maintaining the level of tax incentives as at present, or even for increasing these.

A separate point merits the removal of another restriction that currently implies loss of classification: i.e. with regard to the number of work hours by salaried workers in relation to the work carried out by shareholders as provided for under Article 5.3 of the law. Effectively, one of the aims of this company classification – and which deserves taxation protection – is actually that the means of workers production should come under company ownership. There are two aspects to this:

a. On the one hand, the company classification states that it is necessary for the majority of company capital, or at least of control over the company, to be in the hands of the company employees.

b. On the other hand, the company classification is especially intended to additionally ensure that the majority of employees hold shares in the company capital and that they should, therefore, benefit from any profits generated by their work.

Despite the fact that the first aim relates to the company classification in law, the second attempts to cover two aspects of the legal regime applicable to *SOCIEDADES LABORALES*: on the one hand it awards the employees preferential acquisition rights to company shares; while on the other hand setting down the above mentioned restriction to use the workforce employees who are on long term indefinite period contracts.

If we consider that the clause, as stated above, effectively penalises those companies whenever they offer long term work contracts for indefinite periods and therefore goes against the very policy of full employment itself that brought about the idea of creating the worker owned companies in the first place. It does nothing to solve any of the real obstacles that prevent workers from owning a share of company capital: finance and the availability of shares.

From our point of view, this aim would be more effectively achieved by providing tax advantages for share acquisition by workers and by trying to remove the two barriers:

In the first instance, workers liquidity would be greatly improved if in addition to gaining 15% as a tax discount, they could achieve this through a savings account. That aim can however also be achieved by encouraging the company to contribute to the worker investment, as under the proposed company tax regime.

Secondly, with regard to the availability of shares, we believe that tax incentives for increasing capital specifically directed at workers, and partly financed by the company, could remove that obstacle. We therefore consider that the proposed regime, which is intended to encourage amounts to be set aside to the Special Reserve fund and to provide partial tax relief on that amount for that purpose, is more useful.

A) **25 per cent of net profits to be set aside to the Special Reserve Fund, during the tax accounting year for those profits.**

Making it a requirement to set aside 25% of profits to the Special Fund is not only technically wrong but is also inefficient for the objectives it apparently tries to achieve: to protect the type of company by encouraging it to be self financing.

The first thing it does is raise questions about the scope of application. Effectively, just as in the case of qualifying for classification, and in view of the fact

that it is found under Article 20 of Law 4/1997, one might think that it would only apply to tax benefits provided for under that regulation, and not to the ability to deduct from tax liability provided for under Article 11 TRLIS[39]. In the former case, however, the requirement appeared to arise from the wording of the above mentioned text, which refers to "worker owned companies", but that is not the case with this requirement and therefore the query becomes harder to explain.

Given that it refers, however, to the tax period in which the taxable amount occurs this seems to mean that this is not so, that it would particularly apply to taxes raised in specific periods, i.e. to the IS. An additional reason why that principle[40] is unsuitable lies in the difficulty of monitoring the requirement in the face of some instant tax being paid over. This is because, by definition, the financial tax year in which the 'event on which taxation is due' **(HI)[41]** occurred will not have ended and there is no way to monitor the amount set aside.

The requirement would in fact only possibly be useful with regard to the following tax benefits of those currently proposed:

On the one hand, for the right to set aside in the IS. The requirement would work so as to guarantee that the facility for company self finance intended by that right to deduction from tax liability is effectively used for that purpose and not for paying out dividends to shareholders. That was undoubtedly the case when the law was drafted, but following the amendment of Law 43/1995, the most likely interpretation is that the requirement would not be applied to this tax advantage.

On the other hand, in order to receive benefits paid in documented judicial acts taxation (AJD) for officially requesting loans intended to purchase fixed assets required to carry out the Company Aims and Objectives and in order to be exempt from the tax on company operations (OS[42]) activities for increases in capital.

It does not, in effect, seem possible to apply that requirement to the other tax benefits because these are connected either to the incorporation of the company per se (exemption under the Tax on company operations ('OS')) prior to any company financial year having occurred, and when there are therefore no profits to set aside; or

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[39] As put forward by DE LA HUCHA CELADOR,F. "Tax benefits for *SOCIEDADES LABORALES*" *"Beneficios fiscales de las sociedades laborales",* in the section 'Comentary on the legal regime for trading companies', Vol XV, Worker Owned Companies, Civitas, 2000 page 349; and also stated by CALVO VERGEZ,J. in "Worker Owned Companies: tax considerations", in the section *Tax liability for Legal Entities in Company Financ,* Thomson Civitas, 2005, page. 313.

[40] Que señala CALVO VERGEZ,J. en op.cit., pág. 315.

[41] HI: '*hecho imponible'* 'Event on which tax is due'

else during the first company financial year and usually before the end of that year; similarly taking on company assets from the original company, in the case of a Limited Liability Partnership formed from a company in crisis; and it would normally be necessary for that acquisition to take place in order to start trading.

The technical wording of this principle also shows, in our opinion, that it would not be effective for accomplishing the proposed aims.

The aim of the legislator, when setting down this requirement, seems to have concerned ensuring that the immediate "tax credit" awarded either by allowing the deduction against tax liability or by crediting (**AJD**) on any loans, would be reinvested into the company and matched by an effort on the part of the shareholders to ensure company solvency[43]. While not wishing to throw any doubt on the intention and even on the suitability of this, the instrument used does not seem to be the most appropriate to achieve this aim.

Effectively, in the first instance, if it is not applied to the right to deduct against tax liability, then any Limited Liability Partnership **(SLL)** would simply have to set aside 25% of its profits to that Reserve Fund during the periods in which it intends to request a loan in order to buy fixed assets or increase the company capital. Bearing in mind that nothing is attached to it and that it may not be paid out to shareholders, it would not seem to be achieving the objective in a particularly efficient manner.

Secondly, setting aside 25% of the profits, after having paid into compulsory Funds, may be too heavy a burden for the company (and this has become clear from legal doctrine[44]), particularly if the only counterprovisions are the tax benefits we set out above. It also removes the incentive as soon as the benefit to the shareholder is substantially reduced, who would in practice see the company being taxed at 60%. Furthermore, as ALONSO RODRIGO[45] has pointed out, by requiring such a high set aside amount, this could favour the Limited Liability Partnerships **(SLL)** with the

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[42] OS: tax on company operations

[43] As set out by GOMEZ CALERO,J. (*Las sociedades laborales).* Worker Owned Companies Comares, Granada, 1999, page. 150: VALPUESTA/BARBERENA, *(Las sociedades laborales)*Worker Owned Companies*,* op.cit.pages 210 onwards.

[44] Additionally, DE LA HUCHA CELADOR, in his work referenced above, also considers a set aside amount of 25% to be excessive and proposes that it be matched to the 10% under trading regulations, CALVO VÉRGEZ,J. in *"Sociedades laborales: consideraciones tributarias"* Worker Owned Companies: tax considerations*,* under *Fiscalidad de las Entidades de Economía social*, Taxation of Legal Entitities in Company Finance, Thomson/civitas, 2006, pages 310 onwards.

[45] In *Fiscalidad …*,op.cit., page 225.

highest profits and who could manage to set aside a quarter of their profits, and be detrimental to those with tighter profit margins.

Thirdly, the requirement is not appropriate either from the point of view that it is not linked to the basic element for promoting worker owned companies: the role of this type of company in creating quality jobs and employee ownership of the company[46]. Simply increasing the percentage set aside to a financial reserve fund brings us no nearer towards that target.

On the other hand, setting amounts aside to the Special Reserve Fund as proposed might be relevant from a taxation point of view:

Effectively, in the first instance, the amount set aside serves to ensure that the liquidity provided by the tax benefits is not put towards the dividend, but rather re-invested in the company and helps the company to become self-financing. One should bear in mind that assisting self-financing is precisely one of the objectives, both of the tax benefit regime and of the compulsory nature of the Fund itself. It is true to say that this type of company runs a greater risk of undercapitalisation, precisely because the majority of the shareholders are company employees; nevertheless it is disproportionate to set aside 25% of profits over the entire company lifetime. It would be more appropriate to set aside 10% until the amount of company capital is reached.

Secondly, the fact that it is a Reserve Fund that is either totally or partially linked to worker access to company capital means that, on the one hand, there is a loss of company assets on the part of the shareholders; and on the other, any system enabling workers to have a financial share in company capital must carry incentives. It would therefore be quite valid to turn this into a requirement for tax incentives regarding the way the company is operated structured in accordance with the same objectives. Given that, on the one hand, it implies a burden on the company while on the other it aims to achieve the objectives of company policy. Thus this requirement is added for the sake of tax benefits under the Company Tax. The amount of 25% set aside in order to achieve the provisions of proposed Article 12 is therefore replaced: 10% of profits until the amount of company capital are reached.

[46] On this point, ALONSO RODRIGO,E. *Fiscalidad* Tax Liability …, op.cit. page 225.

The proposal for paragraph B) of Article 20 would therefore be as follows:

"Art. 17. Requirements to be eligible for the tax benefits.

…

2. In order to be eligible for the benefits provided for under paragraph 3 of Article 18, it will furthermore be necessary to have set up a Special Reserve Fund governed by Article 12 and to have set aside the amounts provided for thereunder.

A third set of requirements should be added, as we have stated, in order to be eligible for taxation at 20%. These relate to linking one part of the Special Reserve Fund to the aim of facilitating employee access to company capital. The company would effectively be required to run an employee shares or holdings acquisition scheme and at least 25% of the Reserve Fund be available for assistance with that acquisition. In addition to 10% of profits paid in, the amount of the tax benefits described above would further count towards this. The company would therefore provide at least 2.5% of company profits for the purpose of employee share of profit, in the form of delayed share in company capital. It would also mean that amount would eventually be the equivalent of 25% of the original amount of company capital. Said amount would be given freely by the company shareholders to long term workers on indefinite contracts.

We consider that incentives must be put in place in this regard, especially when European community institutions repeatedly advise tax advantages to stimulate this type of system and particularly in the case of Small and Medium Firms (SMF) **(PYME)** and for companies comprising the companies Financial Sector.

The European Commission Communiqué regarding a framework for financial shareholding by employees, and issued in July 2002[47], is particularly relevant. The Commission notes therein the advantages of worker financial shareholding, highlighted both by USA experience on this matter[48] and pointed out in several studies carried out by the Commission itself in advance of the consultation process per se[49]. It furthermore considers it to be a factor for complying with the aims of the Lisbon convention,

[47] COM (2002) 0364 end

[48] Regarding the use of ESOP systems in the United States, Great Britain and Japan (see MERCADER UGUINA,J. *Modernas tendencias en la ordenación salarial*, Modern trends in salary allocation Pamplona, Aranzadi, 1996, page 215-218.)

[49] VAN DEN BUCKLE (2000) "An entrepreneur perspective of financial holdings in the EU: advantages and obstacles"; EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF WORK AND LIFE CONDITIONS (2001a) *Employee share-ownership and profit-sharing in the EU*, (2001b) *Employee share ownership and profit-sharing in the EU.*

increasing company profitability, workforce motivation and the quality of work. It states that **other European community initiatives** create synergies in this regard:

Productivity, social cohesion and company regulations are generally improved and this ties in with employment policies[50]. Within that framework, it facilitates and improves company social responsibility[51]. However, at the same time capital and risk-capital markets[52]are also developed. This has an effect, furthermore, on modernisation of work organisation and thereby contributes to improving competitivity[53]. Above all, however, it forms part of the European Strategy for Work and Work Directives and does so on two of its pillars[54]: Adaptability, because it favours the adaptation of companies and workers to changes in the economy; and Company spirit : because it stimulates company financing and the spirit of company ownership among the workers.

The most important contribution, therefore, of that Communiqué is that it sets out the **general principles** which should underly the future development of financial shareholding mechanisms, principally based on the consensus of the parties involved and consulted[55]. One should bear in mind, along those lines, that the system will comply with the principles listed within the European Commission Communiqué 2002: It is voluntary in so far as the company is concerned in that it is a requirement for eligibility to a specific tax regime and also for the workers, who may or may not acquire

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[50] As highlighted in the Commission Comuniqué in June 2001 "A framework for investing in quality" (COM (2001) 313).

[51] European Commission Green Paper "Encouraging a European framework for company social responsibility" (COM (2001) 366).

[52] The European Commission communique puts it in the following manner: "Risk capital: Key to employment creation in the European Union" (SEC (1998) 552)

[53] Green Paper "Co-operation for new organisation of work" (COM (97) 128

[54] At the Luxembourg Council of Europe (November 1997) the matter of "Co-ordinated Strategy for Employment" discussed in negotiation. Directives dealing with employment policies based on 4 pillars were brought up for the first time: **1)** encouraging the entrepreneurial spirit: Facilitating companies and employment."The entrepreneurial spirit must be encouraged: one must encourage and assist persons creating new companies or who will employ people. This means reforming the tax regimes, reducing bureaucratic procedures and training entrepreneurs, particularly in small companies. Policies should be adopted stimulating employment in the service industries and organisation which form part of the "social economy"; 2) develop worker employability**; 3)** develop the ability of companies to adapt to changes in the work market and to new technologies: Conceive new and more flexible work methods which reconcile work security and flexibility: "Competitive companies need modern, flexible methods to face up to the way the economy is evolving and, at the same time, to offer security to workers. Reforms and agreements between company spokespersons should open up new types of employment and innovative work organisation methods. It is necessary to facilitate and reduce the cost of company investment in personnel training." The concept of "organisational innovation and in the work model" has been included into the policy of innovation, European Commission Communiqué "Innovation policy: updating the European Union focus within the context of the Lisbon strategy" , (COM (2003) 112 end), dated 11 March 2003**; 4)** reinforcing equal opportunity policies.

[55] These 8 principles are clearly explained within the work of the European Foundation for improvement of the quality of life and working conditions, McCATNEY,J. "Financial participation in the EU: indicators for benchmarking", *European Community Communications department*, Luxemburgo, 2004.

shares depending on their wishes. It is open to all long term workers on indefinite contracts, whether they are full time or part time workers and of all categories. The condition that the long term workers must be on indefinite period contracts is not discriminatory: in effect, because it does not only have to do with a "payment" system but rather a means to provide real access to company ownership and to company management, the nature of the contract as being for an indefinite period ensures that the investment is worthwhile both for the worker and for the company.

Additionally, as we stated earlier, both the European Commission, the Council and the European Parliament, based on a large number of reports pointing out the specific difficulties faced by the SMEs (**PYME)** in order to set up systems for worker financial participation – and especially those consisting of capital holdings – insist on particularly recommending removal of this type of difficulty by means, among other mechanisms, of specific tax incentives.

Effectively, already as part of the (European) Council Recommendation dated 27 July 1992[56], regarding promotion of employee profit-sharing and share of company results (including shares in company capital) one of the recommendations made to the Member States was "…the possibility of putting in place items such as tax incentives or other financial benefits as stimulants to encourage certain formulae for financial participation;……." Similarly, Point 10 of the Annex to the Recommendation reflected the difficulties faced by SMEs in adopting these plans, and recommended that complex legal formulae should be avoided[57]. The European Commission later made statements along the same lines, in its 2002 Communiqué, as did the European Economic Social Council **(CESE)** and the European Parliament[58].

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[56] 92/443/EEC

[57] ENC. 10 Company size: a) Small and medium size companies should be sufficiently able to apply formulae for financial participation; in particular, one should guarantee that there are not too many admnistrative burdens and that minimum financial requirements, if these are necessary, are not too high; … c) The size of a company could also be a factor in deciding which formula is most suitable. 11. Complexity: complex formulae for participation should be avoided."

[58] The Communiqué also mentioned the specific problems of small and medium companies again, covering the problem of SMEs under paragraph 5.3.. This therefore shows that the difficulties of the majority of systems revolve around the fact that "…the cost and administrative complexity of developing such systems is often still excessive for small companies. Bearing in mind the small number of workers in SMEs and the (fixed) costs for this procedure these can also appear to be disproportionate with regard to the possible benefits." Both the CESE, in its Statement on the Communiqué, dated 26 February 2003, and the European Parliament, deem that the initiatives adopted by the Commission are sufficient and support the principles it embraces. These therefore indicate a need to bear the specific PYME factors in mind recommending that the Parliament to the Member State companies support participation models which are feasible in that regard.

And this is the purpose of this specific proposal. The paragraph would read as follows:

> **"Art. 17. Requirements to be eligible for tax benefits.**
>
> …
>
> 3. Additionally, in order to apply the tax rate provided for under paragraph 4 of Article 18, the company must set down, within its Company Articles of Association, that 25% of that Fund, once that amount has been reached, will be used to facilitate access by those employees who so desire, to the company capital, in accordance with a company employee shares and holdings acquisition scheme. This objective could be achieved both by increases in capital as well as by contributions made by the company of part of the price paid by the worker for share or holdings acquisition.
>
> The company contribution may not in any event exceed 50% of the total investment made by the worker in order to acquire those shares or holdings."

Addition of new paragraph 19 "Tax benefits for workers and shareholder investors"

The intention therefore is to provide an incentive for investments made either by those setting up the company or by employees acquiring shares and holdings in the company, thereby benefiting that investment directly. These benefits combine with those offered by the *workforce owned company* and the root-cause idea is to facilitate employee access to company capital, as well as to promote the company being financed by its employees. This encourages the company to save and the workers to build up asset holdings in the company. This actually benefits the different ways that a worker can invest in a *workforce owned company* and which enable them, either immediately or later on, to share in the company capital.

The following clauses are suggested on those lines:

Firstly, that any acquisition of shares or holdings in the *workforce owned company* awarded by the company or any bonds allowing the worker to gain access to company capital, either for free or at a price below market price, should not be counted as **payment in kind** .

Although that regime is generally provided for, as we have seen, under Article 46 of the (TRLIRPF), we believe it should be moved to Law 4/1997, in that it does not seem appropriate to apply the requirement and limits contained therein to *worker owned*

companies, but rather that the specific ones for *worker owned companies* should apply. The requirements would therefore be: that it should be fitted into a general payment scheme and that the limits should not breach the percentage holdings set down under the specific regulations governing this type of company. Therefore and in order to retain neutrality, the same limit as that set down in that principle applies: 12,000 Euros in each financial year.

A tax **exemption for amounts** received from the company for acquisition of those holdings is also set down and has the same requirements. This provision is logical if one wishes to maintain a coherent and neutral system for the manner in which the company facilitates access employee access to company capital. It is, furthermore, necessary if one wishes to provide an incentive to enable the company to finance not just the capital subscribed by the employees by means of the increase in company capital, but also the acquisition of shares or holdings for other shareholders, thereby enhancing the assignment of holdings in the company.

Despite the fact that the provision is logical in itself, the idea of an exemption from income taxation being received in cash would be something completely new for our (Spanish) legislation, which only has provisions to exempt payments in kind from tax liability for cases when shares are handed over. It is not, however, such a novelty for the countries around us, where, quite to the contrary, it constitutes a common procedure in law.

The SAYE (save as you earn) system in Great Britain, for example is a savings plan for the purpose of buying share options, with a *premium* that is paid by the company and a period of withholding. The sum withheld is tax free. The share is acquired at a discount of at least 20%. No taxes are due on the part of the employee either for the premium paid in nor for receiving the share option, nor for its take up. In the SIP[59], which is based on shares being handed over, these are acquired by an external Fund, financed by

[59] SIP (broad-based share option). This has to be made available to all employees who have worked at least one period which was not longer than 18 months. This acts as an external fund, UK based, which is added to (either individually or collectively) by:

- Up to 3.000 pounds sterling of free shares paid by the company, free of tax and social security (for both the employee and the company).
- Up to 1.500 pounds sterling of the employee salary before tax, to be used to buy "working" shares and not liable for payment of social security.
- The company owner may additionally provide up to 2 free shares for each "working" share.

The employee may, therefore, acquire shares in 3 ways: direct purchase of "working" shares, receipt of free shares, or "corresponding" shares for each share bought. After the worker has acquired the shares, up to 1,500 pounds sterling per employee per annum of dividends may be re-invested into further share purchase free of tax. These are known as "dividend shares". There is a withholding period of between 3 and 5 years from the time the shares are assigned.

contributions from employees and further contributions by the company, and is also free of tax liability. Also in **Ireland**, the APSS (approved profit sharing scheme), which is a profit sharing scheme aimed at all employees, must involve a contribution from the company itself. Employees have the option of either taking the set aside in cash (subject to tax and withholdings) or in company shares, in which case the amount is not subject to taxation.

In France, any **amounts paid in to the Special Reserve for Holdings** (RSP) provided for under the *Code du Travail* constitute a tax deductible cost for the company and they are also tax exempt for the employee if blocked for a period of 5 years. If the funds are only withheld by the company for a 3 year period, then half is deductible. The same occurs with amounts paid to employees for the *interéssement,* with the same conditions attached.

Secondly, a **deduction amounting to 15% of the IRPF** (Withholding Tax) **amount** relating to the amounts invested for acquiring or subscribing shares or holdings by company employees, or by those setting up the company. These quantities will not, of course, include either any amounts payable for unemployment in terms of the one-off payment method which may have been exempt, nor any possible contributions that the *workforce owned company* may have made either to the acquisition or subscription thereof and which will not count as payment in kind for the employee basic taxable amount.

Most European systems that provide an incentive for employee share in company capital set out tax benefits for that employee investment. However, these benefits usually consist of exemption from withholding tax (**IRPF)** and social security for the amounts paid by the latter, as we have already stated. Why, therefore, have we opted for a regime of deducting 15%, when this could be less favourable depending on which tax rate the worker is on? Obviously for the sake of simplicity. Any systems which allow a worker to discount investments in company shares for tax purposes do so with regard to contributions made by that person to a fund in which the money is held for a period of time, managed either by the company or by third parties and which equally serves to finance the company during the time that the funds are withheld. The company itself retains the amount of the contribution from the employee salary as a voluntary and agreed "withholding on account".

The company may deduct from its basic taxable amount **(BI)**: a) Costs involved in organising and running the scheme; b) The gross salary amount placed by the employees into the Fund for buying "working" shares; c) The market value of free shares paid into the Fund; d) An amount equivalent to payments made by the company into the Fund for purchasing company shares.

In Great Britain, under the SIP scheme, the worker may acquire shares in three ways: either directly buying "working" shares with amounts set aside from the salary before tax and social security payments are deducted, or receiving free shares or by receiving "corresponding" shares for each share the worker buys. Once the worker has acquired the shares, up to 1,500 pounds sterling per employee per annum of dividends may be reinvested in buying further shares, free of tax. These are known as "dividend shares".

A similar system has been set up in Ireland: it is possible to add "Salary foregone" to the APSS (approved profit sharing scheme). These are contributions made by the worker to the Fund up to a ceiling of the amount contributed by the company owner, free of tax.

In France, contributions made by the workers usually come from their share of profits (although they can be additional) and their tax free status is dependant on being blocked in a company savings fund. This constitutes a company savings scheme (PEE), and allows salary earners access to shareholding while at the same time strengthening company funds. The Savings Fund can hold: a) Voluntary employee contributions, normally either through shareholding or *interessement* (up to 25% of the gross salary) ; b) Company contributions, free of tax and social security payment *("abondement");* c) Shares offered to employees by the company at 20% discount. In order to be tax free the shares must remain in the Fund for a period of 5 years.

There are clear advantages to the system, but also two obvious disadvantages: complexity and cost. Effectively, very complicated and perfect systems for participation – such as those systems based on funds external to the company, etc.- are very expensive to set up and although they attract tax benefits, the costs involved usually outweigh any tax advantages[60]. Different reports regarding financial participation by workers have concluded that while the size of the company itself is important for any participation scheme, it is even more important for schemes which involve participation in company capital than for those which only involve participation in profits as direct cash payments, precisely because of those costs.

Effectively, external control is required for setting up such a Fund or Reserve in order to ensure that, to all effects, it constitutes a loan to the workers. This is one of the reasons, as we have seen, giving rise to difficulties when trying to use capital share schemes in the case of SMEs(**PYME**). If we bear in mind the fact that most *worker owned companies* are either small or micro-companies, it would seem reasonable to set

[60] This is pointed out by POUTSMA,E. "Recent developments in financial participation within the European Union",op.cit. , page. 9.

up the simplest and cheapest systems possible. Neither is it a completely unique scheme: the legislator in Germany also provides incentives for amounts invested by low income workers in their company shares, and applies a deduction on tax rate of between 15-20%.

Furthermore, in order to provide incentives for worker savings which can be turned into a share of company capital, then the **company savings-account** instrument can be used, as it has already been used by the New Company Limited Partnership, introduced under Decree-Law 2/2003, dated 25 April, containing financial reform measures. Any amounts deposited in such accounts attract the same deduction, as long as they are invested after a reasonable period of time, as convertible bonds or share options. This would furthermore be similar to a scheme that has been running in Ireland since 2001 ("Saving scheme"), which provides tax benefits for amounts deposited with credit agencies for the purpose of buying shares in the company providing the employment, and awards a 25% discount on the tax rate for the amounts deposited. This therefore also provides an alternative to the company savings schemes that operate in UK, Ireland or France.

The proposal therefore is for a regime similar to the company savings scheme for New Company Limited Partnership. This is justified, in our opinion, by the policy to encourage company start ups, by the fact that it applies to that type of Partnership, and it should therefore apply all the more to the *Workforce owned company* which, given its special nature, fulfils important objectives of productivity and social cohesion.

Certain differences are set down, however, under this specific regime:

First of all, the discount applies not only to the amounts deposited in the savings-account, but also to those effectively paid in (not saved for the future) to meet the purposes of that account: the acquisition of holdings in options which facilitate access to company capital. We consider that the current regime for company savings accounts under SLNE acts as a deterrent to effective investment and encourages delaying that company investment.

Secondly, the savings account stands for a longer period: 5 years. That is not just in order to bring the time periods into line in so far as possible, but particularly to allow share ownership options to be made available enabling access to company capital, and that is not dependent on the worker. That is why it is made equivalent to the acquisition or subscription of shares or holdings or any other company ownership title which means

future acquisition. Actual company policy will determine to a large extent whether or not employees will be able to access this means of finance, with its tax advantages.

Thirdly, no requirements have been set down for SLNE activity in the initial years, in that the classification as a *workforce owned company* is already a sufficient guarantee in itself, to ensure that it is what it is meant to be and not used merely as a means to obtain a tax deduction. The classification must also be retained for a period of 5 years.

As for the other points (ceilings to the basic amount for deduction, percentage, etc) we have tried to keep the same regulation for the sake of simplicity and neutrality.

We propose a new Article, No. 19, to cover tax benefits for employees and partner shareholders in the company. The article would be along the following lines:

"Art.19. Tax benefits for workers and partner investors.

1. Any shares, holdings in the company or other titles to ownership which imply future access to company capital given to long term workers on indefinite contracts either free of charge or for less than the market price will not be deemed to be payment in kind for as long as these comply with the requirements set out under Article 17.3 of this law and do not exceed 12,000 Euros in any one financial year.
2. In the same terms as the previous paragraph the worker would not either have to pay Income Tax on the amounts paid by the Workforce owned company as contributions to the acquisition to rights to company holdings mentioned thereunder.
3. Discounts for investments in company capital.
   a) Amounts actually paid over during the financial year by a long term worker on an indefinite period contract for the acquisition or subscription of shares in the company capital, or for rights implying future access to such holdings, will attract a discount of 15% of the amount thereof. Any amounts paid over by the company itself will not be taken into account in order to calculate the base amount for that discount.
   b) The same discount as under the previous paragraph will apply to a person incorporating a *workforce owned company* on the amount paid over for the incorporation. Neither any amount that is tax exempt because it constitutes a single payment loan for unemployment nor any grants received will be included in the base amount for calculation of that discount.

   In both cases, the shares or holdings in the company capital must remain within the investment pool of assets for a minimum period of 5 years.
4. Discount for company savings account.

Tax payers listed in the section above can apply to discount any amounts deposited with credit agencies separately from any other type of tax payable for the purposes either of company

incorporation or of acquisition of shares or holdings or of other types of bonds providing future access to company capital.

1° Said discount is subject to compliance with the following requirements:

a) The maximum base amount for the discount to be applied is 12,000 Euros per annum, comprising the amount deposited during any one financial year.
b) Each tax payer may hold only one company savings account,
c) Company savings accounts must be identified in the same manner as accounts set up for housing-savings accounts.

2° The right to that discount will be forfeit:

a) If the tax payer uses the amounts deposited into the company savings account for purposes other than those provided for under this law. In the event that only part of the amount is used then the amounts used shall be deemed to be those first deposited.

b) Where the amount is for company incorporation, if the *workforce owned company* losses its classification as such within less than 5 years from the date the company is entered on the Companies register.

c) If the ownership rights are assigned in a period less than the minimum set down under the previous paragraph.

d) If more than 5 years have transpired and the funds have not yet been used for the intended purposes.

5. Forfeited right to discount.

In the event that the right to the discount governed by the two paragraphs above becomes forfeit, due to failure to comply with the requirements, then the tax payer must add together the net portion paid by the state and the net autonomous or complementary amount applied during the financial year in which the requirements were not met for the amounts that were unduly discounted, plus any deferred interest payment as referred to under Article 26.6 of Law 58/2003, General Taxation."

AMENDMENT TO THE REGIME FOR INCLUSION UNDER THE SOCIAL SECURITY SYSTEM

Amendment to Article 21 Inclusion under the Social Security System.

The right to continue to contribute to the Social Security system is retained for all shareholder employees, with the freedom to choose according to company rights set down in the company Articles of Association. This is further subject to conditions for continuing under the selected tax payment regime and procedures that are compulsory for any change, where appropriate, as specified in current regulations governing this

issue. Any progressive matching of the workers amounts paid in as shareholder in Cooperatives where the relationship is not that of employee shareholder but rather as a partner in the company, to the amount corresponding to employed workers under the general regimes per se, unemployment benefits, payment adjustments regulating temporary suspension from employment and termination of contracts, worker shareholders as fixed term employees, among others, and the pronouncement that self employed workers may take advantage under certain conditions of unemployment benefits, mean that the current regulations regarding Social Security participation for shareholder employees in *worker owned companies* must be basically rethought. Thus, no shareholder employees should, even if they form part of the administrative board (which is a situation for which incentives should be provided) be dealt with in a unfavourable discriminatory fashion simply because they take on additional responsibilities as shareholders to those just as workers, with regard to the other employees. The idea, therefore, of maintaining the term of "included under the general regime" loses meaning.

The freedom to choose between the General Regime (RG) and the special tax regime for self employed workers (RETA), does not alter the relationship between employees and the company, merely the option for contributions and official payments and, while the majority of *worker owned companies* prefer the first option, there are certain situations when partners might deem it more advisable for the way the company is being developed to choose the second option. In view of the support generally available to self employed workers and the open encouragement provided by the government towards entrepreneurship in its multiple forms, there seems to be no reason why freedom of choice for the method for payment of Social Security contributions should not be allowed.

CURRENT DRAFT

Article 21. Participation in Social Security System.

1.- Worker shareholders in worker owned companies, whatever the size of their shareholding in company capital within the limits set down under Article 5 herein, and even when they serve on the company administrative body, will be considered as external workers with regard to the manner they are included in either the General Regime or Special Social Security regime as appropriate for the activity they perform and will be entitled to unemployment benefit, whenever that possibility is set down under the particular regime and as authorised by the Salary Guarantee Fund.

2.- Employee shareholders equate to self employed (external) workers, with regard to participating in the corresponding Social Security Regime, other than unemployment protection and that authorised by the Salary Guarantee Fund, under the following circumstances:

a) Whenever, as company administrators, they carry out management and administrative roles in the company and are paid to do so, whether or not they are, at the same time, linked to the company through a common or special work relationship.

b) Whenever, as company administrators, they carry out management and administrative roles in the company and are, at the same time, linked to the company through a special work relationship as persons in high level company management.

3.- Notwithstanding the provisions of the two previous paragraphs, employee shareholders will be included under the Special Social Security Regime for self employed (external) or autonomous workers, as long as they hold shares in company capital together with the shares held by their spouse and relatives either by blood, marriage or adoption to the second degree and together with whom they hold at least a fifty percent share, unless they are able to prove that effectively exercising control over the company requires the assistance of other persons who are not family members

NEW DRAFT

Article.20. Inclusion under the Social Security system.

Employee shareholders in *worker owned companies*, even those who participate in the company administrative body, whether or not they hold a management position, and whether or not they are paid as such, will be entitled to Social Security benefits and the Company, under its Articles of Association, may choose between the Social Security regime for employed workers or the Social Security regime for self-employed workers as appropriate to the work activity.

Amendment to Article 7 Revised Wording for the Law of Personal Income Tax (TRLIRPF)

Lastly, we propose to amend Article 7 (**LIRPF**), removing the limit for exemption to **unemployment capital payment** as a single payment, whenever this is invested into a *workforce owned company*. It does not seem logical to set taxation limits

for this kind of investment, in that the policy to encourage the creation of SMEs clearly states the need to provide tax incentives to finance them, and particularly during the start up phase.

Any measures aimed at providing an incentive for incorporation and start up would fit generally under the policy aimed to promote the creation and running of SMEs[61], as described above, applicable to the initial company financial years.

In the case, however, of *worker owned companies* being set up as a result of the partners closing down the original company, then the exemption applicable to the capital amount of unemployment payout would also serve to protect the employees in restructured companies, along the lines of the policy to preserve companies. The European Commission Communiqué "Re-structuring and employment- Planning and accompanying company restructuring in order to develop employment: the role of the European Union[62]" states that this policy forms part of growth and employment strategy. One of the elements of this policy is the application of Directives regarding state assistance with company restructuring. It furthermore considers that particular attention should be paid to SMEs under that policy, providing social cohesion. That is why the European Commission is very favourable to measures which guarantee the employees' situation within company restructuring.

On the other hand, the current limit in absolute terms is frankly low. Effectively, as one knows, even partial exemption of the amount paid over has been one of the reasons that *worker owned companies* have been able to remain quite independent from public finance for incorporation. As the Company Finance White Paper[63] points out, this type of company, so far as Company Finance is concerned, does not rely very much on public finance. Most of the initial investment at the date of incorporation comes from capital provided by the shareholders (75.3%), and of these capital amounts 28.3% from

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[61] See, in this sense, Green Paper "Entrepreneur Mentality in Europe", COM(2003) 27, dated 21 January 2003, DG Company Publications, Brussels, 21 January 2003.

[62] (COM (2005) 120 end). CESE appraisal regarding Communiqué (paragraph 4.2.7) states that "In the case of policy on competition the question arises as to whether the instruments which already exist are sufficient. Additional aspects to competitiveness continually arise which have not been reviewed under the competition policy and which are basic, e.g. taxation on companies.
With regard to state assistance, there is still a long way to go before a reform can be put forward with a view to refocussing that assistance to the areas that contribute the most to growth and employment. The Commission, in this context, highlights the fact that it would be appropriate to pay the greatest attention to the relationship that exists between state aid, company restructures and change of production location. It is essential that regulations governing state assistance should not discriminate and social cohesion continue to be encouraged."

unemployment benefit payouts. This has definitely been one of the mechanisms which has provided the greatest incentive to setting up *worker owned companies*[64]. Furthermore, the fact that these amounts are exempt from withholding tax (IRPF) supports the possibility of increasing investment at company start up.

We consider that given it is an investment in production and is aimed at self-employment and is not a cost for the purpose of meeting personal needs or desires, then setting a limit would seem to make no sense from a progressive point of view.

It should further be remembered that most European regimes offer withholding tax (IRPF) exemption with regard to the amount invested during any given financial year for acquiring shares in the company providing the employment. While it is true to say that limits are set out in many cases, it is equally true that for the most part those limits are intended, on the one hand, to guarantee the employee position in itself and to avoid schemes being put in place by the company to try and attain an excessive amount of finance on the part of the employee; on the other hand they are intended to prevent the incentive of acquiring shares which, given the size of the investments, become asset investments that can only be afforded by those in the highest income brackets.

The case here, however, is quite different in that, for a start, the amount is not connected to the person's usual income, nor to their income bracket, as it is a one off payout of an amount that not only has to do with the salary *earned up until that time* but equally, the length of time that the employee worked for the company. And finally, it is intended not as an investment in assets to procure additional income, but as a means to self employment per se and that quite probably will be the main source of income and means of living for that person, at least in an independent fashion, in most scenarios.

"Art. 7. Exempt income.
The following types of income will be exempt:
….

n) Unemployment payout amounts awarded by the particular award body when the single payment type set up under Royal Decree 1044/1985, dated 19 June, is received. That decree regulates single payout unemployment benefit, ~~with a limit of 12.020,21 Euros,~~ as long as the amounts paid over are used for the purposes and in the cases set down under that regulation.

~~The limit set down in the previous paragraph will not apply in the case of unemployment payouts received by disabled employees who become self employed, under the terms of Article 31 of Law 50/1998, dated 30 December, on Tax, Administrative and Social Order Measures.~~

The exemption provided for under the first paragraph is subject to the condition of retaining the share or holding for a period of five years, in cases where the tax payer has joined a *workforce owned*

[63] pages 75, 567 and 568,

[64] Also the School of Cooperative Studies *(ESCUELA DE ESTUDIOS COOPERATIVOS),* Status and perspectives of worker owned companies in Spain *"Situación y perspectivas de las sociedades laborales en España",* Cooperative Society magazine, no. 9, October 2004, pages 6 onwards sets out among the proposals put forward: "Raise awareness of Public Administration and company representatives of the importance of retaining single capital payments for unemployment as a payment option."

company or work cooperative associated with or maintaining, for an identical period of time, that business activity in the case of a self employed worker."

INTEGRATED WORDING
OF THE CURRENT LAW INCLUDING THE PROPOSED AMENDMENTS

Explanation of Grounds in Law

Worker owned companies are an actual type of company that provides an excellent balance between growth in the number of companies and job creation. They represent a formula for economic organisation and company holdings for the employees, and fulfil in practice the mandate set down under Article 129.2 of the Spanish Constitution which states that the public authorities should create methods enabling workers to take ownership of the means of production.

The success of this type of company comes from the way that entrepreneurs have used *worker owned companies* as a legal instrument to formally set up their companies and also the permanent undertaking on the part of the public authorities to support this type of company, which has become an efficient way to create and maintain quality employment positions.
They also serve as a way employees can share in company capital, with the inherent advantages involved and in an unusual manner given that there are three characteristics which distinguish this type of company from the usual means of worker shareholding. The shareholding is an integral part of the company structure itself, contained in the legal format for the company; it is not just a profit share mechanism but rather an actual way in which workers can take ownership of the company and therefore comes under the Company Finance sector; it is a type of company which is usually an SME (PYME), according to the European Commission definition thereof under its Recommendation dated 6 May 2003. This means that it will face the problems that the Commission has specifically stated that the SMEs face in order to use systems for worker shareholding in companies. Those difficulties arise, on the one hand, from the fact that such systems are expensive and, on the other, that because they are not quoted on the stock market it can be difficult to make shares available. That condition, furthermore, means that it will benefit from policies put in place by the EU to encourage that kind of company. Both these points should be kept in mind with regard to the tax payment regime.

In view of new legislation and the way that companies themselves are evolving there is a need to enter a new phase in which the essential characteristics of *worker owned companies* are strengthened and judicial aspects that enhance the 'worker owned' nature of these companies improved, with a modern and up to the minute vision built on European Union policies with a focus on motivating worker shareholding in small and micro companies from the widest possible perspective.

The text therefore considers, in this sense, the essential traits of such *SOCIEDADES LABORALES* and, arising from that, the essential requirements for classification as a "*workforce owned company*" from an administrative point of view; the way to effectively encourage long term workers on indefinite period contracts to become shareholders; how to ensure that the majority of voting rights lie with long term salaried workers on indefinite period contracts and, finally, sets down limits for voting rights

held by each individual shareholder to one third of all existing voting rights. Exceptions are set down along the lines of the 1986 and 1997 laws and include for the first time any capital risk companies which, according to the same criteria, will apply to less than half of them. There are alterations to preferential rights to acquiring company shares or holdings which aim to favour the "worker owned" aspect of the company by giving more importance to the company role in assigning company shares and holdings. Setting sums aside to a special reserve fund is looked at in conjunction with the assignment of shares and holdings, and with tax incentives.

Grounds for loss of classification therefore refer to one of those essential characteristics. Certain aspects, such as how open or otherwise a company may be with regard to shareholders who are not employees, with regard to the free transmission or otherwise of shares or holdings held by the latter, are left to the company to decide and express in the company Articles of Association; also the way all the shareholder employees, whether or not they are managers, can fit into the social security system: the options applicable to the workforce overall, either the General or Special Tax Regime, according to the activity concerned, or whether the Special Regime for Self-Employed Workers applies.
And lastly, a series of tax incentives are set down which reinforce the essential characteristics of the *worker owned companies.* This is a regime of sensible incentives suitable for accomplishing the objectives of the *worker owned companies* themselves and which meet the general concerns both of the constitutional mandate expressed under Article 129-2, the European Union directives for worker shareholding in companies and the elements which typify corporate company liability in those companies, in addition to other fundamental points that have been taken into consideration.

SECTION I

Company Tax Regime

Article 1. The «*Workforce owned company*» Principle

1. Any Spanish Public Limited companies and Limited Liability Partnerships in which the majority **of voting rights belong** to workers who personally and directly perform paid work for that company, and who have a long term contract for an indefinite period, may be classified as «*Workforce owned company*» when they meet the requirements set out under this Law.

*2. **In a workforce owned company,** no one shareholder may own shares or holdings representing more than one third **of voting rights**, other than in the case of **public entities, risk capital companies and non-profit-making organisations,** in which case the amount of shares held can be greater than that restriction but not as much as 50 per cent.*

3. In cases of non-compliance with the limits set down, the company must make changes in order to adapt to the Law within a period of one year from the first date of non-compliance with any of those limits.

Article 2. Administrative jurisdiction

1. The Ministry for Work and Companies, or where appropriate, the Autonomous Communities where the company has acted and provided services, will award the classification of «*Workforce owned company*», and must also ensure that the requirements set down under this Law are complied with, as well as if necessary, having the power to decide whether or not a company must forfeit that classification.

2. The classification will be awarded following an application by the company concerned. All the documents required according to the regulations must be attached to that application.

Where appropriate, any recently incorporated companies will provide an authorised copy of the corresponding deed of incorporation, depending on which form of deed is involved, showing the express intent of those granting the deed to set up a *Workforce owned company*. If the company is already up and running, then a copy of the deed of incorporation and, where appropriate, deeds regarding any amendments to the company Articles of Association, duly entered on the Companies Register, together with the clearly worded certificate from that Registry with regard to any current entries for the company and certification of the Shareholders' Meeting decision agreeing that the company be classified as a *Workforce owned company.*

Article 3. Company Name

1. Either the wording "Spanish Public Limited *Workforce owned company*" (*«**S**ociedad **A**nónima **L**aboral»)* or "Worker Owned Limited Liability Partnership" (*«**S**ociedad de Responsabilidad **L**imitada **L**aboral)* must be included in the company name or else the abbreviations SAL or SLL, whichever applies.

2. The adjective «workforce owned» ***(laboral)*** may not be included in the company name of any company which has not been classified as a "*Workforce owned company"* («Sociedad Laboral»).

3. The adjective ‘workforce owned’ ***(laboral)*** must be shown on all documents, correspondence, purchase orders and invoices, as well as in any published advertisements, in accordance with legal or regulatory provisions.

Article 4. Administrative Registry for SOCIEDADES LABORALES.

1. A Registry for *SOCIEDADES LABORALES* is set up within the Ministry of Work and Companies, to maintain records of all legal procedures as set down under this Law and under its own working regulations, all without prejudice to the jurisdiction over these matters lying with the Autonomous Communities.

2. The company will be considered to be a legal entity in law from the moment that it is entered on the Company Register, even though in order for a company classed *workforce owned* to be entered on that Register it must present the certificate proving that said company has been classified either by the Ministry of Work and Companies or by a competent body of the respective Autonomous Community and entered as such on the Administrative Register referred to in the paragraph above.

The fact that a company is classified as a *workforce owned company* will be noted at the Companies Register by means of a margin note on the open company registration entry, in the manner and within the time periods set down under the regulations concerned and notification issued to the Administrative Register.

3. When either a Spanish public limited company (SAL) or a Limited Liability Partnership (SLL) obtains classification as a “workforce owned company” this is not considered to be an alteration to the type of company and neither is it subject to the regulations applicable to changes in type of company.

4. All “worker owned companies” must, on a regular basis, inform the administrative Register of any share or holding assignments providing certification of the register-record of bearer shares and of the Shareholders’ Record.

5. Any Judge hearing a challenge to any company agreement which may affect the capital share composition or a change of registered address outside the municipality shall inform the Worker Owned Companies Register of the existence of that court action and the grounds on which it has been challenged, as well as of any ruling either upholding or refusing the challenge.

6. The Companies Register will not enter any amendments to the Articles of Association for any Workforce owned company, which either affects the composition of share capital or a change of registered address outside the municipal area, unless the company concerned duly provides a certificate in that regard issued by the Worker Owned Companies Register as appropriate or showing either the decision that the amendment does not affect the company classification as a workforce owned company, or that the change of registered company address has been entered on that register.

Article 5. Company capital and shareholders.

1. Company capital must be divided either into bearer shares or company holdings. In the case of the Spanish Public Limited Workforce owned company (SAL), any passive dividends must be paid up within the time period set out under the company Articles of Association.

2. It is not possible to authentically create any employee type shares **or holdings** that do not carry voting rights.

Article 6. Types of shares and holdings.

1. There are two possible types of shares or holdings in *Worker Owned Companies*: those owned by the workers on long term contracts for an indefinite period and those owned by others. Shares of the first kind will be termed "employee shares" and the second type will be termed "general shares". **The *Workforce owned company* may own shares or holdings of both types.**

2. In the case of a Spanish Public Limited Workforce owned company (SAL), the shares must be represented by titles, either individual or grouped, and numbered in sequential fashion and, in addition to the general requirements, must show which category they belong to.

3. **Whenever any long term workers on indefinite period contracts acquire general category shares or holdings or whenever any others acquire worker category shares, then the category of share will be officially changed by the** company administration, with no need for the agreement of a Shareholders Meeting. **The change will be carried out by agreement of the administrative board and will be entered in the Companies Register by means of a certificate showing that agreement.**

Article 7. Voluntary transfer of shares and holdings “inter vivos”.-

1.- Any holder of general class company shares or holdings, unless the Company Articles of Association specifically state the contrary, is free to transfer these either to shareholders or to third parties and any owner of workers company shares or holdings is free to transfer these to company employees holding a long term contract for an indefinite period, whether or not they already own shares in the company.

In both cases the person transferring the shares must inform the company, in writing and with guaranteed mode of receipt, of the number of shares or holdings they intend to transfer and of the identity of the person acquiring them. The company may only oppose the transfer if the limits imposed under Article 1 of this Law are surpassed. Any opposition shall be notified within a period of 7 days with immediate proposal of a shareholder, third party or the company itself as willing to acquire the total number of shares or holdings within the period of one month from the date that the intended transfer was advised.

2.- In all other cases of transfer of worker class shares or holdings, the person transferring these shall further inform the company irrevocably of the transfer price and conditions. The company executive board will notify long term company workers holding contracts for an indefinite period within 15 days from the receipt of that notification. Any workers who do not own shares in the company may acquire them during the month following that notification. If, after that time, none of them has exercised that preferential right then the shares or holdings may be acquired by workers who already own shares or, if not, by the company itself, within a period of 15 days.

3.- In the event that several people wish to exercise their preferential acquisition right, then the shares or holdings will be distributed among them all equally, except where the Company Articles of Association set out other criteria in this regard.

4.- In the event that neither any long term worker holding a contract for an indefinite period nor the company itself exercises their preferential acquisition

right as set out under Paragraph 2, the shareholder may freely assign the shares or holdings he or she owns, unless the Company Articles of Association acknowledge some other preferential acquisition right.

5.- In any event, if nobody exercises their preferential acquisition right within a period of two months starting from the date that the shareholder advised his or her intention to transfer, then he or she will be free to assign the shares or holdings they own. If the shareholder does not transfer these within a period of four months, then the proceedings governed by this Law must start over again.

Article 8. Reasonable price.

The price of any shares or holdings, method of payment and other conditions for the operation will, **unless there is an agreement or the Company Articles of Association provide otherwise,** be that agreed and communicated to the administrative body by the shareholder transferring said shares or holdings.

If the proposed transfer is carried out either as a form of paid transaction other than purchase or free of charge, then the acquisition price will either be the price mutually agreed by the parties or **as set down in the Company Articles of Association, and**, if not, becomes the reasonable value of the shares or holdings on the day that the company administrative body was informed of the intention to transfer. That reasonable value is deemed to be the amount determined by an account auditor other than the company auditor and appointed for that purpose by the managers.

The company will pay auditor costs. The reasonable price as decided will apply to all transfers taking place within each financial year. If either the person transferring shares or holdings or the person acquiring them in the course of transfer transactions during the same financial year does not accept that reasonable value, then a new evaluation may be carried out at the expense of that person or legal entity.

Article 9. Nullity of regulatory clauses

1. Clauses forbidding the voluntary assignment of shares or holdings “inter vivos” will only be valid in law if the Company Articles of Association embody the right of that shareholder to leave the company at any time. All shareholders must consent in order for such clauses to be included into the Company Articles of Association.

2. Notwithstanding the provisions of the above paragraph, the Company Articles of Association may forbid the voluntary assignment of any shares or holdings by acts «inter vivos», or by exercising the right to separation, for a period of time of not exceeding five years from the date the company was incorporated or, in the case of shares or holdings arising from increases in capital, from the date that the public deed referring to that increase is officially authorised.

Article 10. Compulsory transfer of shares or holdings

1. If a worker shareholder ceases to be employed by the company, the former should offer his or her shares or holdings **within a maximum period of three months from the confirmed termination of that employee relationship,** as set out under **Articles 7 and 8.2** and in the event that nobody exercises their acquisition right, then he or she would continue as shareholder in the company but as a holder of general shares.

In the event that somebody wishes to acquire those company shares or holdings, whenever the shareholder, after ceasing to work for the company and having been duly advised by Notary of the requirement to do so, does not, within the period of one month, officially carry out the sale, then it may be awarded by the company administrative body who will **assign the value thereof** over to that person either by judicial means or at the *'Caja General de Depositos'* or at the Bank of Spain.

2. The Company Articles of Association may set down special regulations to cover cases involving retirement or permanent disability of the worker shareholder, as well as for cases where the worker shareholder may be on extended leave.

3. In the event that an embargo has been placed on the company shares or holdings or a pledge being processed that had been set up with regard to those shares or holdings, then the provisions of Article 31 of the Law governing Limited Partnerships will apply, with the particular requirement that workers on long term indefinite period contracts, but who are not shareholders, are also notified and that the right to substitution provided for may be carried out by those persons who have preferential acquisition rights according to the Company Articles of Association.

Article 11. "Mortis causa" transfer of shares or holdings.

1. If a person who is either an heir or a beneficiary of the deceased acquires company shares or holdings due to inheritance then that person becomes a company shareholder.

2. Notwithstanding the provisions of the above paragraph, the company Articles of Association, in the event of the death of the worker shareholder, may acknowledge a preferential acquisition right for those worker category shares or holdings, by means of the procedure set out under Article 7 **and for the corresponding share value amount according to Article 8.2, to be paid in cash, unless an agreement or provision under the company Articles of Association states otherwise. Such preferential acquisition right must be exercised within a maximum period of three months,** starting from the date the company was informed of the acquisition by inheritance.

3. If the heir or beneficiary works for the company under a long term work contract for an indefinite period, then the preferential acquisition right under the company Articles of Association cannot be exercised.

Article 12. Special Reserve.

1. In addition to any reserves required either by law or under the company Articles of Association, worker owned companies are required to set up a Special Reserve, setting aside, at least, 10 per cent of the net profit for any particular financial year until the amount of the Fund matches the amount of the subscribed company capital.

2. The Special Reserve fund will be used either to assist workers in becoming company shareholders, for investments in company business or to compensate any losses incurred if no other sufficient reserves are available for that purpose.

Article 13. **Preferential rights in capital increases**.

1. Any increase in company capital involving new shares being issued or the creation of new company holdings should abide by the existing ratios between the different categories into which the company capital is divided, **except when the company capital is being increased for the purposes of the provision set out under Article 1.3.**

2. The owners of shares or holdings pertaining to any of the categories shall have preferential rights to acquire or take on any new company shares or holdings for that particular category.

3. Unless there is a decision to the contrary taken at the Shareholder's Meeting where the increase in company capital is adopted, then any shares or holdings which remain either unsubsribed or are not taken up by the shareholders for that particular category will be offered to any workers holding **long term contracts for an indefinite period** in the manner set out under Article 7.

4. The exclusion of the **preferential** right will be governed by the respective Law, according to the type of company concerned, although whenever that exclusion affects worker category shares or holdings then the amount of the premium will be freely decided by the Shareholders' Meeting as long as that same Meeting approves a Plan for acquisition of shares or holdings by company workers **holding long term contracts for an indefinite period** and if the new shares or holdings are intended to comply with the Plan and the prohibition on transfer during a five year period is imposed.

Article 14. Loss of classification.

1. If the limits set out under **Article 1 of this Law are surpassed** this would be legal grounds for loss of classification as <*Workforce owned company*>.

2. After having ascertained that legal grounds for loss of classification exist, the Ministry of Work and Companies or the corresponding administrative body in the competent Autonomous Community and, once the time periods set out under this Law for such grounds to cease to exist have expired, then the company will be required by law to remove the grounds within a time period not exceeding six months.

3. Once the time period referred to in the paragraph above has expired, if the company has not removed the legal grounds causing loss of classification, then either the Ministry for Work and Companies or the corresponding body of the Autonomous Community with jurisdiction in the matter, will issue a decision stating that the company no longer qualifies as a *workforce owned company* and order its removal from the Worker Owned Companies Register. The corresponding entry will be noted and a certificate issued stating that decision and the removal from the corresponding Companies Register so that a margin note can be made on the relevant public page for the company.

4. In the event that a company loses its classification as a Workforce owned company within a period of less than five years from incorporation or from change of category, then the Workforce owned company will not be eligible for tax benefits. The corresponding procedure will be adjusted to the provisions set down under the regulations referred to under the penultimate provision of this Law.

Article 15. Winding up of the Company.

1. Worker Owned Companies will be wound up on grounds set down under corresponding regulations either for Spanish Public Limited Companies (SAL) or Limited Liability Partnerships (SLL), according to the type of company.

2. The Company Articles of Association may state that the company will be wound up in the event that the company loses its classification as "*Worker Owned*" company.

Article 16. Change of Registered Address.

Any *Workforce owned company* that changes its registered address to a location outside the area covered by the administrative Register will come under the new Register with jurisdiction for that area.

The original Register, nevertheless, retains jurisdiction for hearing and deciding any proceedings regarding loss of classification that were already in progress at the time the change of registered address occurred.

SECTION II

Tax Regime

Art. 17. Tax Regime eligibility requirements.

In order to qualify for tax benefits, *worker owned companies* must meet the following requirements:

1. Classification as "*Workforce owned company"* at the time the event on which tax is payable took place. This requirement can be complied with *a posteriori*, if at that moment in time it meets the actual requirements for

classification and as long as it requests classification within 3 months from that date. The company must continue to qualify for classification continuously for at least 5 years initially from the date of incorporation or transformation in order to retain any tax benefits received relating to that period.

2. With regard to the benefits provided for under paragraph 3 of Article 18 it will additionally be necessary to have set up a Special Reserve Fund as provided for under Article 12 and to have set aside the amounts provided for thereunder.
3. Furthermore, in order for the tax rate provided for under Paragraph 4 of Article 18 to apply, the company must state within the company Articles of Association, that 25% of that Reserve Fund, once the amount of company capital has been attained, must be used to facilitate access of long term workers on indefinite period contracts, who so desire, to the company capital in accordance with a Worker share or holding Acquisition Scheme. This objective can be achieved both by increases in capital and by contributions paid in by the company to cover part of the share or holdings acquisition price.

The amount of the company contribution should not, in any event, exceed 50% of the total invested by the employee to acquire those shares or holdings.

Art. 18. Tax benefits for *Worker Owned Companies.*

Any worker owned companies meeting the requirements set out under Article 17 herein will be entitled to the following tax benefits:

1. The following operations are exempt from any form of Tax on Capital Gains and Documented Legal Acts (ITP and AJD) other than the basic fixed tax rate for the type of Documented Legal Acts (AJD):

a) Any incorporation, merger, capital increase and contributions by shareholders to make good any losses incurred by *worker owned companies*,

b) Any amendments to the company Articles of Association or transformation either to enable classification as either a Spanish Public Limited *Workforce owned company* (SAL) or Limited Liability Partnership *Workforce owned*

company (SLL) or in order to adapt the company Articles of Association to this Law,

c) Setting-up of loans, including loans in the form of debentures and bonds issued, workers' convertible bonds, where the purpose of that amount to acquire fixed assets used to carry out company business of *worker owned companies.*

d) Any acquisition of fixed assets during the first two years of operation of a *workforce owned company*, taken either from the date of incorporation or of classification. Exemption hereunder is dependant on keeping those assets within the company holdings for 4 years from the date of acquisition.

2. They will not be required to make the part payments referred to under Article 38 of Legislative Decree 4/2004, governing the revised text for Company Taxation, with regard to the amount payable as taxation for any tax periods commencing within the first two years from the date of incorporation or classification.

3. In the situation provided for under Article 17.2 they can, additionally, benefit from the following tax incentives:

a) Any profits re-invested into fixed assets may be discounted from the Basic Taxable amount (BI) for the tax period in which they are acquired, as long as that reinvestment into fixed assets takes place within no longer than two years from the end of that financial year. The percentage amount of that discount is calculated by dividing the total number of work hours per annum carried out by employee shareholders by the total number of work hours per annum carried out by both employee shareholders and long term workers on indefinite period contracts.

An amount equivalent to that discount must be paid over to the Special Reserve Fund governed under Article 12 herein, either during the financial year that the discount applies or within the two following tax periods.

b) Any tangible and intangible fixed asset items may be freely set against tax due to be paid, as long as a further amount is paid into the Special Reserve Fund equivalent to the extra cost deemed discountable as part of the amount calculated within the accounts as tax deductible.

4. The tax rate applicable to *worker owned companies* meeting the requirements set down under Article 17.3 is set at 20%.

5. Whenever any shares or holdings in the company are provided to long term workers on indefinite period contracts either directly or by means of options or any other legal instrument, either free of charge or at a price below market value, these will not be deemed to be donations as long as they relate to a company payment policy set down within an employee share or holdings acquisition scheme. It must be applicable to everyone in that category and the limits for capital holdings set down under Article 1 herein apply.

The amount of any company contributions intended to facilitate the acquisition of shares or holdings by those employees will also be considered as a tax deductible cost under the same terms.

Art. 19. Tax benefits for employees and investor partners

1. Any company shares or holdings or other kind of bonds providing future access to company capital distributed to long term workers on indefinite period contracts, either free of charge or at a price below market value, will not be treated as payment in kind as long as such payments meet the requirements set out under Article 19.3 herein and do not amount to more than 12,000 Euros within any one financial year.
2. Any amounts paid over by a *workforce owned company* as contributions to the acquisition of company holdings set out in the paragraph above will not be subject to Income Tax payable for the employee.
3. Discounts for investment in company capital.

   1. A deduction of 15% of the sum of any amounts actually paid out during a financial year by a long term employee of a *workforce owned company* on an indefinite period contract to enable them to acquire or subscribe to shares in that company's capital or for bonds implying a future share in that capital can be applied to the amount of tax payable. Any amounts paid out by the company itself do not count towards that deduction.

   2. The same discount as in the previous paragraph will be applied to anyone setting up a *workforce owned company* in the amount of the sums provided for incorporation. Neither any amounts that are already exempt

because they are unemployment benefit single payment amounts nor any grants received may be included in the tax deductions amount.

In both cases, the capital shares or holdings must remain as part of the investor's assets for a minimum period of 5 years.

4. Deduction by reason of company-savings account

Tax payers listed under the paragraph above may apply to deduct amounts deposited with credit agencies, separately from any other kind of taxation, for the purposes of setting up the company or of acquiring shares or holdings or any other kind of bond allowing access to company capital in the future.

1st -That reduction is subject to fulfilling the following requirements:

b) The maximum basic taxable amount of this reduction is 12,000 Euros per annum, comprising the amounts deposited in each financial year.

c) Each tax payer may have only one company savings account,

d) Company savings accounts must be identified in the same fashion as those set down for housing-savings accounts.

2nd - The right to deduct those amounts will be forfeit:

a) If the tax payer uses the amounts deposited in the company savings-accounts for purposes other than those set down under this Law. In the event that they are only partly used, then it will be assumed that any amounts used were the amounts first deposited.
b) In the case of incorporation, if the *workforce owned company* loses its classification as such within a period of less than 5 years from the date of entry in the Companies Register.
c) If those company holdings are assigned within less than the minimum period set out under paragraph b) above.
d) If the funds are not used for the purposes set out under these provisions within a period of 5 years.

5. Loss of right to deduct

In the case of backdated loss of the right to deduct from tax governed under the two paragraphs above, or in the event that the requirements are not complied with, then the tax payer is obliged to add together the net state portion and the net autonomous or complementary portion arising during the tax year in which the requirements for the amount which were incorrectly deducted were not

complied with, plus any interest payments referred to under Article 26.6 of Law 58/2003, General Taxation."

Article 20. Participation in the Social Security System.

Shareholder employees in *worker owned companies*, even those who serve on the company administrative body, whether or not they are company directors, and whether or not they are remunerated as such, will be eligible for Social Security benefits and the Company may choose, by means of the company Articles of Association, between the Social Security system for employed workers or the Social Security System for self employed workers according to their role.

First additional provision.

Any Autonomous Communities with transferred jurisdiction for managing the Administrative Register for Spanish Public Limited Companies (SAL) will continue to exercise that jurisdiction with regard to the Register for *SOCIEDADES LABORALES* referred to under Article 4 herein.

The provisions of Section II of this Law are understood to be without prejudice to the statutory taxation regimes currently in force in the Historical Territories of the Basque Country and the Statutory Community of Navarre.

Second additional provision.

Worker owned companies, whether Spanish public limited companies or limited liability partnerships may, for the purpose of order representation before Public Administrative bodies and in order to defend its interests, as well as for the purposes of organising consultancy, training, legal or technical assistance services as well as any others that may be appropriate for the interests of the shareholders', organise specific groups or associations in accordance with Law 19/1977 dated 1 April governing the right to trade union association.

Third Additional Provision.

With regard to legislation for lease activity, no transfer is involved whenever a Spanish Public Company or Limited Liability Partnership qualifies for classification as *workforce owned* or ceases to qualify as such.

Fourth Additional Provision.

The references contained in the revised wording of the Law for Workforce Proceedings, approved under Royal Decree 2/1995, dated 7 April, as well as the different regulations regarding the promotion of Spanish Public SOCIEDADES LABORALES (SALs) will be taken as having been set down, from now own, for *SOCIEDADES LABORALES*.

First Transitory Provision.

Any proceedings relating to *SOCIEDADES LABORALES* that were already in progress at the time that this Law came into effect will be decided in accordance with the regulations that were in force at the time the proceedings were instigated.

Second Transitory Provision.

The content of any public deed (of incorporation) and the company Articles of Association of a Spanish Public Limited Company duly classified and registered under the scope of regulations that are hereby revoked cannot be used to challenge the provisions of this Law. In this sense there is no requirement that they be formally adapted to the provisions herein.

~~Third Transitory Provision.~~

~~Any SOCIEDADES LABORALES which currently receive the tax benefit of freely deductible amounts as referred to under Point 2 of Article 20 of Law 15/1986, dated 25 April, will continue to receive that benefit until the end of the authorised time period and under the authorised conditions.~~

Sole Provision to Revoke.

When this Law comes into force then Law 15/1986 with regard to *SOCIEDADES LABORALES* dated 25 April will be revoked, as well as Royal Decree 2696/1986 and

also the provisions of Royal Decree 2229/1986 where these are not opposed to this Law and so long as the provision set out under Second Last Provision is duly complied with.

First Final Provision.

The regulations governing either Spanish public limited companies or Spanish Limited Liability Partnerships will apply when there is no specific provision under this Law, according to which kind of company is involved.

Second Final Provision.

The Government, at the suggestion of the Ministries of Justice and Work and Companies, having heard the Autonomous Communities, will approve the operation, jurisdiction and co-ordination of the Administrative Register for SOCIEDADES LABORALES of the Ministry for Work and Companies, within a time period of no longer than three months following the date of publication of this Law.

Third Final Provision

The Government, at the suggestion, with regard to their particular jurisdictions, of the Ministries of Justice, Economy and Taxation, Work and Companies, may issue whatever provisions are necessary for this Law to be further developed.

Fourth Final Provision.

This Law will come into effect thirty days from the date of publication in the "Spanish Official State Bulletin" «*Boletín Oficial del Estado*».

PROPOSAL TO AMEND ROYAL DECREE 3/2004, REGARDING PERSONAL INCOME TAX

Art. 7. Exempt types of income

The following types of income will be exempt from income tax:
….

n) Any unemployment payments acknowledged by the appropriate administrative body as long as these are taken according to the single payment method set down under the provisions of Royal Decree 1044/1985, dated 19 June, which governs unemployment benefit single payments and as long as those amounts are used for the purposes and in the cases set down under that regulation.

The exemption set out under paragraph one is dependant on retaining said share or holding for a period of five years if the tax payer starts work with either a *workforce owned company* or an associated workers cooperative, or on remaining in the same business activity for an identical period of time, in the case of a self-employed worker."

PROPOSAL FOR AMENDMENT TO ROYAL DECREE 4/2004, REGARDING COMPANY TAX

Art. 11. Value corrections: depreciation.

…

2. The following may be freely offset against tax:

b. Any tangible or intangible fixed assets pertaining to *Spanish Public Limited SOCIEDADES LABORALES* (SAL) or to *Workforce Owned Limited Liability Partnerships* (SLL) used for the purpose of the business activity, ~~and acquired during the first five years from the date they are classified as such~~ **under the terms set out in the provisions of Article 18.3 of the governing regulation.**