CORPORATIONS

PART I

campos thomaz
& meirelles advogados

INTRODUCTION

History repeats itself so much that it seems biblical: you start your small startup with your college roommate with an idea in your head and nothing in your pocket. Raise a simple working capital with friends and family and hire a developer to create the software that will turn your business dream into reality. He doesn't have the money to hire the developer right now or pay the programmer's well-deserved salary. Solution? You talk to him and propose that he join the company with you as a partner. Confident in the future success of the business, he accepts. Soon, his business becomes a "partnership", and "they open up a company", an EPP, modest. The first customers license their software. Word of mouth works, more people get in touch. But for the expansion of your model, you need more capital. You and your partner know someone interested in investing in you and helping you with the company's financial routine. We have your CFO. You and your partners run like a Swiss watch. The mutual trust and effort of all of you are essential for the company's success. A first big contract comes up, and billing grows. Several people knock on your door interested in investing (concepts like angel investors, seed, and incubators become routine in your vocabulary). The company enters several convertible mutual instruments with the promise that "at the right time", they will enter the company and become partners. The moment arrives. Now you have several partners that you barely know. Won't this affect the dynamics of my company's management? The success of my company has always depended on trust and alignment between partners and managers.

On the other hand, your investors don't know you either and have the same fears. After all, being a partner in an Ltd., it's a responsibility! Even with all the Law's limitations to defend the partners' assets, numerous situations can affect the partner's "natural person" account. And you don't even have to go very far, like extreme fraud cases. Look at Labor Justice, where it's easy for a partner (who doesn't even have management over the company) to have his account blocked for acts (sometimes lawful) of another partner.

Investors demand that you transform your company into a corporation (the famous "S/A"). It is the legal type designed to function as a real company: the distinction between the management, organization, and capital. But does this imply more costs, more bureaucratic routines, and legal duties? How does S/A work, and why is it so different from Ltd? We will try to unravel this sphinx in this article.

GENERAL FEATURES

There are two types of S/A:

I

PUBLICLY TRADED

The company's shares and bonds are traded on the stock exchange and the like

II

PRIVATELY HELD

Participation in the company's capital stock is not distributed to the public

Although the two types are the same legal type, each format has its own set of rules that must be followed.

Apart from the rare exceptions in which some companies are already publicly traded, it is common for the S/A to exist, at least in the beginning, as privately held. Thus, as the "initial shock" with S/A bureaucracies happens with the privately held format, we will focus the discussion in this article on the privately held ones (although many of the provisions also apply to the publicly traded ones).

BODIES AND MANAGEMENT

As stated above, S/As are designed to ensure management distinction and organization. Thus, the company's organizational chart comprises several (mandatory or not) bodies with a defined hierarchy, distinct powers and obligations, and a defined role of action).

BOARD

It is the strategic body of the company elected by the general meeting, which defines the planning, and the parameters of the company's performance, supervises the activity of the directors and defends the interests of the shareholder (or group of shareholders) that elected it. According to the company's growth and, consequently, the increase in sophistication of the shareholders who invest in it, it is routine that investors, through investment contracts and shareholders' agreements, reserve for themselves the right to appoint one or more directors, who may have right of veto or affirmative vote on certain material matters. In general, the following matters are reserved for the board: increase the company's share capital up to the limit defined in its bylaws (avoiding having to call all shareholders), supervise, elect and dismiss directors, and administer employee incentive plans (stock option plans), review of relevant contracts and business plans, etc.

The board must have at least three members. Of course, it is recommended, as in any collegiate body, that the number is always odd (to avoid deadlocks). The Board of Directors must be elected for periodic terms (which cannot be longer than three years and may be

reelected). Thus, in general, directors are sworn in on unified terms. If a director is removed or leaves before the end of his term, he must be replaced (according to the rules of the bylaws). Such a substitute must fulfill the rest of the term of his predecessor (and not start a new term count), vacating the position at the end of the unified term along with the other directors. These unified mandate dynamics aim to facilitate the management of the election of the board, avoiding the need to elect or reelect directors in different periods (remember, directors are elected by the assembly, which must publish such acts, as shown in the infographic above).

One of the directors is elected as Chairman of the Board, who, in addition to presiding over the body's meetings, normally has the functions of calling board meetings and presiding over general meetings). In general, directors are not remunerated by the company for performing this function.

FISCAL COUNCIL AND COMMITTEES

It can be a temporary or permanent organ. In general, it is only fixed when the company is at an advanced stage. For the other companies, it is a body only formed when necessary. Its function is to supervise the administration and analyze its reports and oversee the company's financial compliance. It is a more technical body than the others, and it is mandatory by law to be formed by specialists qualified for the position and who have proven dependence on the company's management. In addition, there are clear rules for the remuneration of its members to ensure the board's exemption.

The company may also install other committees to deal with specific topics of relevance to the company, deliberate and execute or indicate to the board of directors' action plans, such as audit committee, ESG, corporate governance, compensation, etc.

OFFICERS

It is the operating arm of the company. Despite being a marker of social status, placing the soup of acronyms of C-Level positions on your LinkedIn profile (CEO, CFO, COO, etc.) is a highly responsible position that can directly affect the officer's assets!

Our recognitions

Análise Advocacia (2021)

Chambers & Partners Brazil (2021 & 2022)

Leaders League (2021 & 2022)

Transactional Track Record (2021 & 2022)

The Legal 500 (2022)

Meet our **Partners**

Alan Campos Thomaz

Partner

Technology & Digital Business, Privacy and Data Protection, Fintechs and Intellectual Property

at@camposthomaz.com

+55 11 9 8375.2627 +1 (650) 6436652

Sérgio Meirelles

Partner

Corporate, M&A, Venture Capital and Wealth

sergio@camposthomaz.com

+55 11 9 7551.9865

Filipe Starzynski

Partner

Litigation & Law Enforcement, Civil, Real State, Labor and Family

filipe@camposthomaz.com

+55 11 9 7151.9639

Juliana Sene Ikeda

Partner

Intellectual Property, Technology, Agreement and Life Sciences

juliana@camposthomaz.com

+55 11 9 8644.1613

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