

ATTACHMENT II:
CODE OF COMMERCE VS. LAW 479-08
-Notes for Corporate Adjustment or Transformation into L.L.C.-

(Numbers in parentheses are articles of the legal texts)

	CORPORATIONS AS PER THE CODE OF COMMERCE	LIMITED LIABILITY COMPANIES AS PER LAW 479-08	PRIVATE CORPORATIONS AS PER LAW 479-08
Minimum Capital/Minimum Value of the Corporate Portions	No minimum capital is expressly established. Minimum value of the shares: RD\$5.00. Taking into account that the minimum number of shareholders is 7, the minimum corporate capital would be RD\$35.00 (51 and 56).	RD\$100,000.00 divided into interest units (<i>cuotas sociales</i>) of a face value of no less than RD\$100.00. The Ministry of Industry and Commerce can adjust these amounts by regulation every three years according to inflation (91).	RD\$30,000,000.00 divided into shares of a face value of no less than RD\$100.00. The Ministry of Industry and Commerce can adjust these amounts by regulation every three years according to inflation (91).
Term for Maintaining Number of Members Below the Legal Limit	The Corporation is subject to dissolution upon action by any interested party after one year has transpired or after the number of shares became less than 7 (59).	The reduction in the number of members below the minimum is not expressly established as a cause of dissolution. In fact, should that be case, it will transform into a Limited Liability Proprietorship.	It can be dissolved due to the reduction in the number of shareholders to less than two (2) for a period of one year (299).
Minimum of Shareholders/Members	7 (56).	2 (89).	2 (154).
Forms of Shares/Interest Units	Shares can be nominative, to the order of, or bearer.	Nominative interest units (91).	Shares can be nominative, to the order of, or bearer (305).
Currency of Corporate Capital	Dominican currency.	Dominican currency or a freely convertible foreign currency (24).	Dominican currency or a freely convertible foreign currency (24 and 308).
Proportion of Subscribed Capital	10% minimum (56).	100% (92).	10% minimum (280).
Administration	By a Board of Directors composed of 2 or more members or by a President-Administrator. They can be individuals or entities, shareholders or non-shareholders (31). They can be designated for up to 3 years by the Bylaws and up to 6 years by the Shareholders Meeting (57).	By one or more managers who must be individuals, members or not (100). They can be designated by the Bylaws or by a subsequent act of the company for the period indicated in the Bylaws not to exceed 6 years (100).	By a Board of Directors composed of at least 3 members (208). In the event that a company should form part of the Board of Directors, it must name an individual as its permanent representative (212). The President of the Board of Directors must be an individual (213). The members of the Board of Directors can be shareholders or not (215). They can be designated for 3 years by the Bylaws or for 6 years by Shareholders Meeting (210).

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Meetings of the Board of Directors and the Managers	The Code of Commerce does not expressly regulate the meetings of the Board of Directors, nor are its attributions which are determined by the Bylaws.	Law 479-08 does not expressly provide for the form of the meeting nor the attributions of the managers.	It provides for a quorum for the meetings at least half the members unless the bylaws foresee a higher proportion. Decisions will be adopted by a majority of those present and represented. The vote of the president of the meeting will be decisive in the event of a tie. (218). It establishes the possibility of adopting decisions, without the need of presence at the meeting and the exercise of vote via any electronic or digital means (219).
Powers of the Meetings of the Board of Directors or of the Managers	Not foreseen in the Code of Commerce. Normally, this is regulated by the Bylaws.	The granting of powers for meetings of the managers of the company is not foreseen.	An administrator can give a mandate to another administrator, lacking a clause to the contrary in the Bylaws. An administrator can represent only one single administrator in one and the same meeting (219).
Limitations on Serving as Administrator	The Code of Commerce does not establish requisites nor express limitations for holding the position of administrator (31). The Accounts <i>Comisarios</i> cannot serve as members of the Board of Directors.	The principal limitations established by Law 479-08 provide that the following cannot be managers: (i) individuals holding five (5) mandates as administrators at the same time in any kind of company; (ii) officials in public service with functions under his or her charge related to the activities of the company in question (28 and 211).	The principal limitations established by Law 479-08 provide that the following cannot be managers: (i) individuals holding five (5) mandates as administrators at the same time in any kind of company; (ii) officials in public service with functions under his or her charge related to the activities of the company in question (211).
General Constitutive Meeting	Obligatory. No shareholder shall have more than 10 votes (57)	Optional. There is no maximum of votes.	Obligatory. No shareholder can have more than 10 votes (193).
Annual Ordinary General Meetings	Obligatory. No term is set for the holding of the Shareholders Meeting. This should be established by the Bylaws (57).	Obligatory. It must be held within the 3 months following the closing of the fiscal period (110).	Obligatory. It must be held within the 6 months following the close of the fiscal period (190).

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Convening of General Meetings	<p>The Code of Commerce does not expressly foresee the person in charge of making the convening notice.</p> <p>The form and term for the convening of shareholders meeting is not foreseen in the Code of Commerce. This is regulated by the Bylaws.</p>	<p>It corresponds to the managers to formulate the convening notice (97).</p> <p>The term for the convening of general meetings is not foreseen. This can be regulated by the Bylaws. It is established that the meetings for considering the report on the annual performance be convened via physical or electronic communication with acknowledgement of receipt indicating the agenda (110).</p>	<p>The Bylaws can set the rules for convening; however, in any event, this must be formulated by the Board of Directors (192).</p> <p>Via notice published in a newspaper of national circulation, via circular, e-mail any other means of effective dissemination, with the advance notice established in the Bylaws or, in its absence, 20 days in advance (197).</p>
Need of Presence at the Sessions of the General Meetings	<p>Not foreseen in the Code of Commerce. The Bylaws can provide for the preparation of minutes without the need of presence at a meeting.</p>	<p>Decisions can be adopted via a written consultation or by consent of all the members of the company contained in minutes without presence in a meeting and the possibility exists for exercising voting via any electronic or digital means (except for the meetings that consider the report of the annual performance, the financial statements and the report from the Accounts <i>Comisario</i>, which must have presence at the meetings) (111).</p>	<p>It foresees that decisions can be adopted via minutes signed by all the shareholders without the need of presence at the meeting and it establishes the possibility of exercising voting via any electronic or digital means (187).</p>
Record of General Meetings	<p>No obligation for keeping a Record of Shareholders Meetings.</p>	<p>Obligation to keep a registry, in chronological order, of the minutes of the general meetings (34).</p>	<p>Obligation of keeping a registry, in chronological order, of the minutes of the shareholders meetings (34).</p>
Presidency of the General Meeting	<p>Not foreseen in the Code of Commerce. This can be regulated by the Bylaws. In most cases, the shareholders meeting is presided by the President of the Board of Directors or by the President-Administrator, as the case may be.</p>	<p>The general meeting of members will be presided by the manager or one of the managers. If none of the managers is a member of the company, it will be presided by the accepting members present having the largest number of interest units. If there are two or more members with the same number of interest units, the meeting will be presided by the oldest one (116).</p>	<p>The shareholders meeting will be presided by the President of the Board of Directors and, in his or her absence, the person foreseen by the Bylaws (204).</p>

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Formalities Subscription of Shares/Interest Units	<p>The subscription and payment of shares is proven via a statement sworn before a notary (51).</p> <p>Every 6 months the shareholders meeting must note for the record the shares subscribed during the preceding six months (51).</p>	<p>The funds for the subscription of interest units must be deposited within 8 days after their receipt in a banking account to the name of the receiver of the funds and on the account of the company in formation. The funds will be unavailable until matriculation in the Mercantile Registry (92).</p> <p>In the case of the subscription of new interest units in an existing company, the funds will be deposited into an account in the name and on account of the company and the withdrawal of the funds will be made after the issuance of a certification by the party depositing the funds (121).</p> <p>The Subscribed Capital should also be included in the Bylaws.</p>	<p>The subscription and payment of the shares of the corporation in cash will be attested to through a "Subscription Receipt" (<i>Comprobante de Suscripción</i>) signed by the founders and by the subscriber (159, 164 and 276).</p> <p>Two years after having constituted the corporation, the ordinary general shareholders meeting can require the shareholders to subscribe and pay the shares issued, pending subscription, with the warning that once one year has passed after notification, the shares can be offered to the other shareholders (276). After two months of having approved the increase in the corporate capital, the shareholders meeting can require the subscription of shares in proportion to their participation. Once one month has passed, the shares not subscribed will be offered to the other shareholders and then can be offered to third parties (285).</p> <p>Subscribed Capital must be attested to in the Bylaws.</p>
Restrictions Distribution of Dividends	<p>Legal reserve of 5% of the profits must be set aside for each period until it reaches 10% of the corporate capital (58).</p> <p>Obligatory to share out profits up to 8% of the subscribed and paid capital. The excess over 8% can be distributed or re-invested by the shareholders meeting (57).</p>	<p>The provision of the Code of Commerce is maintained (47)</p> <p>Overtured.</p>	<p>The provision of the Code of Commerce is maintained (47)</p> <p>Overtured.</p>
Term for Distribution of Dividends	No term foreseen. It can be established by the Bylaws.	Distribution of dividends must be made within the 9 months following their declaration by the general meeting (44).	Distribution of dividends must be done within the 9 months following their declaration by the shareholders meeting (44).
Distribution of Dividends by Re-evaluation of Assets	Not expressly foreseen by the Code of Commerce	The increase due to re-evaluation can only be distributable as dividend with the sale or disposal of the re-evaluated asset (45).	The increase due to re-evaluation can only be distributable as dividend with the sale or disposal of the re-evaluated asset (45).

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	Obligatory (57).	Optional (130).	Obligatory (241).
	One or more <i>comisarios</i> (57).	If opted, one or more (133).	One or more (241).
	Period of Designation: 1 year.	Period of designation: 3 years (133).	Period of designation: 3 years (248).
	Can be and individual or an entity.	Must be an individual (94).	Must be an individual (241).
	Can be shareholder or not.	Can be member or not.	Can be shareholder or not (242).
Accounts Comisario	<p>The Code of Commerce foresees no specific requisites to serve as accounts <i>comisario</i>. The requirements for exercising the position must be established by the Bylaws.</p>	<p>Must be a certified public accountant with at least 3 years of experience in the auditing of companies (133 and 242).</p> <p>The following cannot be accounts <i>comisarios</i>: (i) individuals simultaneously exercising 5 mandates as accounts <i>comisarios</i> of any type of business association (211); (ii) officials in public administration service with functions related to the activities of the company in question (211); (iii) founders, managers of the company and its affiliates, as well as their relatives up to and including the fourth degree; (iv) administrators of other companies who own 1/10 of the paid and subscribed capital of the company, as well as the spouses of said administrators; (v) employees of the companies or their spouses (243).</p> <p>They cannot be managers or employees of the company or its controlled and affiliate subsidiaries until after 2 years have passed since they ceases in their functions (244 and 245).</p>	<p>Must be a certified public accountant with at least 3 years of experience in the auditing of companies (242).</p> <p>The following cannot be accounts <i>comisarios</i>: (i) individuals simultaneously exercising 5 mandates as accounts <i>comisarios</i> for any type of business association (211); (ii) officials in public administration service with functions related to the activities of the corporation in question (211); (iii) founders, administrators of the corporation and its affiliates, as well as their relatives up to and including the fourth degree; (iv) administrators of other companies who own 1/10 of the paid and subscribed capital of the corporation, as well as the spouses of said administrators; (v) employees of the corporation or their spouses (243).</p> <p>They cannot be administrators or employees of the corporation or its controlled and affiliate subsidiaries until after 2 years have passed since they ceased in their functions (244 and 245).</p>

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Contributions in Kind	Via Declaration of Contribution and approval of shareholders meeting (57).	Contributions in kind, descriptions, evaluations and dates of the contributor must be attributed in the Bylaws (94). They must be approved via general meeting (122).	Contributions in kind, descriptions, evaluations and information on contributor must be attested to in the Bylaws (162). They must be approved via a shareholders meeting (279).
Comisario to Verify Contributions	Obligatory in the case of contributions in kind. The exercise of the function has no specific requirements (51).	Not obligatory if the estimated value of the contribution does not exceed 25% of the corporate capital (94). Must be a certified public accountant or a duly accredited assessor and/or matriculated in the Dominican Institute of Appraisers (<i>Instituto de Tasadores Dominicanos</i>) or registered in the Superintendency of Banks or in the Superintendency of Insurance (94).	Obligatory in the case of contributions in kinds. Must be a certified public accountant (162). Must be a certified public accountant or a duly accredited assessor and/or matriculated in the Dominican Institute of Appraisers (<i>Instituto de Tasadores Dominicanos</i>) or registered in the Superintendency of Banks or in the Superintendency of Insurance (162).
Dissolution in Case of Losses	Obligation to convene the shareholders meeting to decide on the dissolution of the corporation in case of loss of three quarters of the corporate capital (58).	Obligation to convene the general meeting to decide on the dissolution of the company in case of losses that reduce the accounting patrimony to less than half the corporate capital (137 and 139).	Obligation to convene the general meeting to decide on the dissolution of the corporation, if as the consequence of losses, the net assets of the corporation are less than half the subscribed and paid capital (301). Obligation to reduce the corporate capital when losses have diminished the accounting patrimony below two-thirds of the authorized corporate capital and if a fiscal period has passed without having recovered the patrimony (292).
Foreign Plaintiff Companies	Obligation to present <i>judicatum solvi</i> bond (for in transit foreigners plaintiffs) (16 Cod. Civ.).	Overtured (11).	Overtured (11).

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Founder Portions	The emission of founder portions or founder benefits (securities without any nominative value as compensation for services provided) with the right to participate in the benefits.	Labor or personal services cannot be subject of contribution and must be compensated as "accessory tasks (<i>prestaciones accesorias</i>)" and (23). The emission of beneficiary portions or founder portions is prohibited. These rights must be converted into <i>accessory tasks</i> . (23)	Labor or personal services cannot be subject of contribution and must be compensated as "accessory tasks (<i>prestaciones accesorias</i>)" and (23). The emission of beneficiary portions or founder portions is prohibited. These rights must be converted into <i>accessory tasks</i> . (23)
Transfer of Shares/Interest Units	The transfers of shares must be recorded in the corresponding record, the assignment is effected via the declaration of transfer recorded in the records and signed by the party making the transfer or his or her empowered party (36). Any limitation on the negotiability of the shares must be foreseen in the Bylaws.	Interest units can be freely transferred among members, except for any limitation in the Bylaws (97). For the transfer to third parties, the consent of three quarters of the interest units is required (97). There will be a preference right to the benefit of the members and then a preference right for the company itself. This preference right cannot be eliminated by the Bylaws. Only the terms can be abbreviated, or the majorities required by Law 479-08 increased (97). If the company refuses to approve the assignment, they will be obliged to acquire the interest units or have them acquired within a term of 3 months (97). The Bylaws can foresee that, in the case of succession, liquidation of community property between spouses, or assignment between parents and descendants, the spouse, heir, parent or descendant can only be a member after their acceptance in the conditions foreseen by the Bylaws (96).	The transfer of shares must be recorded in the records which the corporation maintains to that effect. The assignment is effected via a declaration inserted in the records and signed by the party making the transfer, by the acquiring party or by their respective empowered parties (305). Any limitation on the negotiability of the shares (including preference rights) must be foreseen in the Bylaws, as long as the limitation does not forbid its transferability (315). The provisions from the Bylaws restricting the transferability of the shares will not be enforceable in cases of succession, liquidation of community property between spouses, or the assignment to a spouse, a parent or a descendant (316). If the Bylaws foresee prior approval for the sale of shares, in the event that a corporation does not approve the proposed assignee, the Board of Directors will be obliged, within a term of 3 months as of that rejection, to have the shares acquired by a shareholder, by a third party or by the corporation itself (317).

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Conservation of Books, Information and Documents on Commercial Operations	Obligation to conserve/retain the books of commerce during 10 years (11).	Obligation to conserve/retain documents and information backing the commercial operations for a period of 10 years (32).	Obligation to conserve/retain documents and information backing the commercial operations for a period of 10 years (32).
Obligation to Present Audited Financial Statements	Obligatory for companies with subscribed and paid capital in excess of RD\$750,000.00 (Art. 1 Law 4548).	Obligatory for companies utilizing credit from third parties, or which issues obligations of any kind, or that may have gross income in excess of 100 minimum salaries (33).	Obligatory for corporations utilizing credit from third parties, or which issue obligations of any kind, or that may have gross income in excess of 100 minimum salaries (33).
Record of Shares/Interest Units	It is obligatory to attest to the shares in certificates (34 and 36). Nominative shares must be attested to in a record the corporation must maintain (36).	It is not obligatory to attest to the interest units in certificates. In the cases in which they are attested to in a certificate, there is an obligation to carry out a record that contains the general personal data of the members and the following data on the interest units: date of issuance, type, class, certificate number, amount of corporate portions, nominative value and amount of the certificate (34).	It is obligatory to attest to the shares in certificates (310). Obligation to maintain a record in which the successive transfers of shares are recorded, which contains the general credentials of the shareholder, as well as the constitution of real rights and other encumbrances (305).
Sworn Statement Liability over Financial Statements	Obligation is not foreseen.	The President or the chief executive officer, as well as the chief financial officer must present a sworn statement of their liability for the financial statements, the report on performance and the internal control of the company (43).	The chief financial officer must provide a sworn statement of his or her liability on the financial statements, the report on performance and the internal control of the corporation (43).
Obligation of Information Acquisition of Shares/Interest Units	Not foreseen in the Code of Commerce.	Every individual or entity who attains participation in a company with over 20% of the right to vote its paid and subscribed capital, must inform the company by bailiff's notice within a term no greater than 15 days (55).	Every individual or entity who attains participation in a corporation with over 20% of the right to vote its paid and subscribed capital, must inform the corporation by bailiff's notice within a term no greater than 15 days (55).

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Reciprocal Capital	Not foreseen in the Code of Commerce.	If an L.L.C. has a company among its partners which has a fraction of its capital equal to or less than ten percent (10%), the former cannot have any more than a fraction equal to or less than ten percent (10%) of the interest units issued by the latter. If it comes to own a greater fraction, it must dispose of the excess within a term of one (1) year and cannot exercise the right to vote such excess (57).	A corporation cannot have investment in another company, if the latter holds more than 10% of the paid and subscribed capital of the former (56).
Powers of Representation for the Shareholder Meetings	The Code of Commerce does not foresee limitation on the scope of the powers granted by the shareholders.	The members can only have themselves represented by a third party in the case that the Bylaws expressly allow it (113). The representation mandate is granted for just one general meeting or for two meetings held on the same day or within a period of 7 days. The mandate for a shareholders meeting will be good for successive meetings with the same agenda (113).	The mandate of representation is granted for just one shareholders meeting or for two, one ordinary and one extraordinary one held on the same day or within a period of 15 days. The mandate for a shareholders meeting will be good for successive meetings with the same agenda (198). Except for cases of legal representation, the President and other members of the Board of Directors, managers, accounts <i>comisarios</i> and employees cannot represent shares other than their own in shareholders meetings (198).
Certification of Documents	Certification of the attendance list for the shareholders meetings under the charge of the Secretary (57). The Bylaws can grant the Secretary the power to certify other documents.	Copies or extracts of the minutes of the deliberations of the members certified by just one manger are valid (116).	Copies of the minutes of the shareholders meetings will be certified validly by the President and the Secretary of the Board of Directors (207).
Notification Creditors on Reduction of Capital	Not foreseen in the Code of Commerce.	The reduction of capital for restitution to the members of their contributions cannot be effected until 3 months have passed as of the date of notification by a bailiff's act to the creditors of the plan for a reduction of capital (125).	Not foreseen for corporations.

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Extinction Action for Annulment Acts Subsequent to Constitution	<p>This action expires in 3 years as of the day the action was initiated (64).</p> <p>The action for annulment ceases to be receivable when, before the introduction of the lawsuit, the cause for the annulment has ceased to exist (64).</p> <p>An action for annulment will not be receivable as of the date of the convening of the shareholders meeting towards covering the annulment (64).</p>	<p>This expires in 3 years as of the day on which the annulment took place (377).</p> <p>The action for annulment expires when the cause of the annulment may have ceased on the day that the court should decide on the merits in the first instance, unless the annulment was based on the violation of a public order rule (371).</p>	<p>This expires in 3 years as of the day on which the annulment took place (377).</p> <p>The action for annulment expires when the cause of the annulment may have ceased on the day that the court should decide on the merits in the first instance, unless the annulment was based on the violation of a public order rule (371).</p>
Action of Liability Derived from Annulment	<p>This expires 3 years as of the day on which the action was initiated. (64).</p> <p>The action of liability ceases to be receivable when, prior to the introduction of the suit, the cause of annulment has ceased to exist and when further 3 years have transpired after the day on which the annulment was incurred in (64).</p>	<p>This expires in 3 years as of the day on which the decision of annulment attains the authority of something irrevocably judged (186 and 380).</p> <p>The disappearance of the cause for annulment prevents the exercise of the action of liability for the indemnification of the harm caused to the company. This expires 3 years after the annulment has been covered (371 and 380).</p>	<p>This expires in 3 years as of the day on which the decision of annulment attains the authority of something irrevocably judged (186 and 380).</p> <p>The disappearance of the cause for annulment prevents the exercise of the action of liability for the indemnification of the harm caused to the corporation. This expires in 3 years after the annulment has been covered (371 and 380).</p>