
The Board of Auditors in a Joint Stock Company

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The Board of Auditors can be an important auxiliary instrument in the administration and inspection of the corporate routines of a Joint Stock Company. Its constitution, although not mandatory in law terms, helps the shareholders to maintain a general control over the company, especially in regard to the daily action of its Officers. Therefore, we present you the form and the advantages of its constitution.

1. Introduction

The Law no. 6.404, of December 15th, 1976 lists the characteristics of a joint-stock company, with its obligations and peculiarities. According to this Law, a joint stock company must have four organs, of deliberative or executive natures, and it may have a fourth organ, as presented below.

The first organ mentioned and also the most important is the General Meeting, which has deliberative character and works with all the company's shareholders. Apart from the meeting, there is the board of directors, being facultative to the closed joint stock companies, and with deliberative character. The third organ mentioned is the board of officers, obligatory, which executes the deliberations of the general meeting and the board of directors.

The board of auditors is the fourth organ considered obligatory to a joint stock company. However, its operation is facultative, which means it stays deactivated when unnecessary. When needed, it may be activated at any time,

without any need to explain the reasons for such.

In other words, it means that the articles of incorporation of the company do not necessarily need to specify the existence or not of the board of auditors, it being sufficient the will of the shareholders, basing themselves on the invigorating legislation, so that there may be its election and consequent functioning.

2. Board's Composition

The board of auditors consists in at least three and a maximum of five members, shareholders or not, considering that the directors and the officers cannot be elected for the board. The auditors shall be elected in accordance with the shareholders hierarchy: the minorities and the preferred without the right to vote shall elect two members and their respective substitutes (one for each of the shareholders group), and the other shareholders with the right to vote shall elect the remaining members and their respective substitutes.

3. Functions and Obligations of the Board

According to article 163 of the herein mentioned Law, it is up to the board of auditors to oversee the directors' acts and check the fulfillment of their legal and statutory duties.

It is to say that its monitoring is for the company and the shareholders' protection. The board may require information, examine documents and make suggestions on the accounting validity of the board of directors acts, using all the means at its disposal to do so.

When compared to other organs inside the company, the board members assume the same obligations as of the directors.

When put in the same step as the company's directors, even as a facultative organ, the existence of the board of auditors does not depend on express statutory prevision, because of its importance. And, despite of the fact that the board of auditors does not represent the company, its members must observe the same legal duties imposed to the directors.

The board of auditors may be facultative, however, its importance to the good functioning of a joint stock company is such that it becomes permanent to the companies that choose to activate it. The integrity of the company's members, such as an impartial monitoring of the data makes the board essential, for the company's own good.

It is more common, but not a general rule, to verify its existence in large joint-stock companies, even if they have a closed capital, or in open capital joint-stock companies, which are, as a general rule, always bigger than the ones aforementioned. However, this does not mean

that a smaller joint-stock company cannot or must not have it, considering the understandings of its shareholders.

4. Conclusion

It is understood, therefore, that this organ can be implemented in order to give the shareholders a higher sense of security in relation to the administrators' actions, as well as the company's representation before third parties.

With the definitions and concepts herein established, the Consulting and Corporate Sector of Almeida Law, always counting on a specialized team, remains at your entire disposal for the elaboration of studies of the concrete case, verifying if the use and installment of a Board of Auditors is adequate and, if it is, how best to implement it and start its duties.