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CASE STUDY – BLOCK 1

CHARGING, SL is a Spain-based limited liability company whose main activities are the design and manufacture of all kind of USB chargers for premium devices (such as smartphones, laptops, tablets, smart devices, etc.). But the very competitive advantage of its products is the technology applied to the chargers that enables to complete the charge for times faster than its competitor in the market. The company has been incorporated, by three partners, in Madrid on 28th January 2018 with an initial capital of 50.000 Euros.

The founding partners are:

- Ana María Soto
- Carlos García
- Payming, SL

The capital is divided in 500 stakes of 100 Euros each (nominal value). According to the capital contributions, partners' participation in the company is divided as follows:

Ana María: 10.000 €	100 stakes	20%
Carlos: 8.000 € + laptop	100 stakes	20%
Payming: 20.000 € + server	300 stakes	60%

Could Carlos contribute the laptop and technological knowledge to the disposition to the company as equity contribution -instead of providing the 8,000 euros-?

Could Ana María - driving force behind the idea of setting up a company- receive 125 shares instead of the 100 mentioned?

According to company's bylaws, the company is managed and represented by two directors acting on a jointly basis (Ana María and Carlos). In a very first stage, and due to the weak financial situation experienced by the company, it is urgent to get a bank loan and Carlos decides to sign a financial agreement in the name and on behalf of the company and asks PAYMING to sign as well as major shareholder. **Is the agreement valid and enforceable? If not, who would be entitled to challenge that agreement?**

After one year, business is being reasonably successful. The activity of ***CHARGING***, **SL** is increasing at a significant rate and three contracts with most popular distributors -such as Amazon or BestBuy- have been concluded in last five days. Despite such a promising outlook, expenses are really high at the ending of the start-up stage and most part of contracts is subject to installments plans. Therefore, the company has to improve urgently its financial situation.

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Partners have estimated that financial resources needed to face the next stage in their business amount to 150.000 €.

In a quite strained meeting of all partners, several options were considered:

a). Increase the company capital in 150.000 € by issuing new stakes that the current partners will have to buy.

- **Explain briefly the highlights of this corporate transaction**
- **What happens if one of the partners do not have sufficient financial availability for the expected contribution?**
- **Can the other partners acquire then his/her proportion of the new shares instead?**

b). Accept the express of interest of Tim Shaffer to invest in the company and make him a serious offer.

Are they losing the control of the company? How can the founding partners prevent the Business Angel from taking the total control over the company?

An offer was sent to Tim Shafer (business angel). The business angel accepted the offer, but his final decision was subject to the following requirements:

1). After a *due diligence* of the company, the business angel could be interested in investing 450.000 € in the company. The expected time limit of his investment is 3 years with a year rate of return of 15%. In the second year, the founding partners will be entitled to buy a 50% of the business angel's equity capital. The sale price will be increased in 15% over the contribution. **Is the year rate of return of 15% acceptable for the founding partners? And more important, it is legal?**

2). Any decision involving the entry in the future of other investors in the company requires the favorable vote of the business angel. **Is this condition acceptable for the partners? Why? In which point should the partners compromise?**

3). The business angel will be entitled to appoint all directors of the company. **Is this condition acceptable? In which point should the partners compromise?**

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4). If the business angel receives an offer from a third party to buy the whole company, the current partners will be committed to sell their participation in the company at the price proposed by the buyer and accepted by the business angel. **Advise them how to proceed in order to anticipate such risks and prevent them and draft at least two of the conditions that should be included in the investment agreement to be entered into between the investor (BA) and the entrepreneurs.**

The current partners do not want to offer to the business angel a participation in the capital higher that 20%. **How can they achieve it without losing the promised funding of 450.000 €?**

In order to structure the investment, an investment agreement will be signed among all current partners and the business angel. **The following two stipulations were included in the investment agreement aiming to regulate some of the previous points. Explain their content; to whom of the current partners try to protect and what risks are they anticipating.**

[A] *Each of the Shareholders hereby grants to the other Shareholders the right (but not the obligation) to join the Selling Shareholder(s) and co-sell (together with the Selling Shareholder(s)) upon the election of the relevant beneficiaries all their Shares to the proposed acquirer for the same consideration per Share and otherwise at the same terms and conditions as applicable to the Selling Shareholder(s) [except for [(i)] any representations, warranties and/or indemnities other than (several and not joint) title warranties solely in respect of the Shares sold by such other Shareholder(s) and (ii) payment of the consideration per Share, which must be in immediately available cash] upon the occurrence of a Tag-Along Event.*

Should partners/shareholders be able to join with other partners who intend to sell their shares to a third party?

[B] *The Relevant Selling Shareholder[s] shall have the right (but not the obligation) to require all other Shareholders to sell, and the other Shareholders hereby irrevocably agree to sell, all (but not less than all) of their Shares then held to the proposed acquirer for the same consideration per Share and otherwise at the same terms and conditions as applicable to the Relevant Selling Shareholder[s] upon the occurrence of a Drag-Along Event.*

Should majority partners/shareholders be able to force minority partners join into a sale?