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THE CLASSIFICATION OF COMPANIES REGARDING THE COMMERCIAL ACTIVITY

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ABSTRACT

The article deals with legal forms of companies incorporated in Romania according to different classification criteria with legal relevance, with a different value, and thus differentiated consequences in terms of law.

KEY WORDS: COMPANIES, CLASSIFICATION, ASSOCIATES, SHAREHOLDERS, CONSTITUTION.

INTRODUCTION

Judiciously, the literature has noted that at present, in terms of regulatory classification societies are no longer paid on the basis of the distinction the company - civil society, but the distinction between the company having legal personality (mainly regulated by Law No. 31/1990) and unincorporated company mainly regulated by the Civil Code.

According to art. 2 of Law no. 31/1990, companies with legal personality shall be lodged in one of the following forms: general partnership; limited partnership; corporation; company limited by shares; limited liability company.

The legal text reproduced exhaustively lists the legal forms they may have companies formed in Romania under Law no. 31/1990. Using the premise of these legal forms listing the legal doctrine[1] adopted several criteria for classification societies. Next we highlight those with legal relevance.

1. THE CRITERION ROLE ELEMENT *INTUITU PERSONAE* IN CORPORATION FOUNDATION

[1] O. Căpăţînă, *Societăţile comerciale,* Editura Lumina Lex Publishing House, Bucharest, 1996, p. 62.

By nature or by prevalence element of personal or material, companies are divided into two categories: partnerships and capital companies.[2]

a) partnership

Such companies are called to be established, organized and function in consideration of the identity and professional qualifications of their members. So, their establishment is dominated by the element intuitu personae, so that companies of this kind are characterized by a strong cooperative. And it's natural to be so, because no capital, but striving, trust and cooperation partners to obtain profit interest them and motivate them to associate with each other to achieve finality.[3]

Intuitu personae element is analyzed here as glue companies of its kind. In other words, the company is built on the personality of people each associate and associate status is designed and modelled according to a person to which they are inseparable and that link. Is why this quality is accessible to third parties only with the consent of all partners, the expression of which is otherwise subject and its transmissibility through inheritance.[4]

The rule is that in a business partnership may be driven by each of the partners. Through the instrument of incorporation or by his successor Convention, but associations may stipulate otherwise. The basis of this rule lies precisely in the idea of personal cooperation and mutual trust that should characterize relations between associates.

Companies are belonging to the group of people in society partnerships and limited partnerships. To these, in our view, add and joint ventures, which is a corporate structure without legal personality and legal regulation of which is not found in the provisions of Law no. 31/1990, but in art. 1949-1954 Civil Code and in art. 33-34 of Law no. 15/1990.

Partnerships are distinguished by capital companies to the following specific notes:

- When setting up their decisive element is intuitu personae. Such companies are established only by people who know each other and have each other trust, full and mutual consideration, such as to substantiate, morally, such a trust. [5]

- The liability of members for debts Social is joint and unlimited, which means that if the social creditors are unable to recover claims following assets of the company, they are entitled to proceed on the path forced pursuit against all affiliates or any of its to realize, fully, receivables matured .

- The dissolution of partnerships operate both when intervention dissolution general terms provided by law, and if intervention special terms provided by law. Note that the aforementioned cases of application are applicable only to companies founded on intuitu personae element, in the case of partnerships and Limited Liability Company. And it's natural to be so, because each involves dissolving precisely because it demolishes the moral foundation of society, which is the element intuitu persona.

- conditions for the establishment of society's people are also different compared to those established by law on capital companies, or on limited liability companies. Thus, this law does not require a mandatory minimum capital leaving to the discretion of the parties determining the amount of capital in each case.

[2] Stanciu D. Cărpenaru, *Tratat de drept comercial român*, Ediţia a IV-a, updated, Universul Juridic Publishing House, Bucharest, 2014, p. 147.
[3] Stanciu D. Cărpenaru, *Tratat de drept comercial român*, Ediţia a IV-a, updated, Universul Juridic Publishing House, Bucharest, 2014, p. 147.
[4] C. Gheorghe, *Drept comercial român*, C.H. Beck Publishing House, Bucharest, 2014, p. 250.
[5] Gh. Piperea, *Drept comercial. Întreprinderea,* C.H. Beck Publishing House, Bucharest, 2012, p. 161.

Therefore, we believe that in the absence of a legal provision expressly to establish the requirement for a mandatory minimum capital, as a condition to establish a partnership, the founding members are obliged to agree a reasonable capital relative to needs achieving the objective which society is always circumscribed its object of its activity.

The law establishes no minimum required for people to be setting up a partnership. However, taking into account that in our legal system governed neither a single-member company, will conclude that the establishment of any structure requires at least two shareholders.

Referring to limited partnerships, this implicit requirement of the law is nuanced in that here it is necessary to establish, of the two founders, necessarily, one must assume the status of general partner and one limited partner quality.

Finally, the memorandum of unincorporated businesses is restricted to the partnership agreement; there is no need to draw up a company statute. We expressed our opinion that in the absence of a statutory provision to the contrary, nothing precludes the founders agree and preparing a company statute respecting this law provisions on the form and content of status for when such a component of the articles of association required as required for its validity.

b) Capital Companies

The corporations consists of a large number of partners, required capital needs without showing interest personal qualities associates. The essential element is the share of capital invested associate (intuitu pecuniae). [6]

Capital companies assume that essential capital contributed by shareholders, associates, capital having more relevance than the qualities associates.[7] Here the person who associates, their qualities as trust and mutual consideration of them does not matter. In many cases - especially when formation of the company takes place by calling public subscription - associations did not know each other.

In group capital companies, joint stock company (which is a real prototype in the field) and companies limited by shares.

In our opinion, the main notes of specificity in capital companies may be summarized as follows:

- The decisive factor in setting capital companies is the idea of capital, and not the person who associates or her qualities.

- Associations of the capital companies are holders of securities issued by such companies. They are called generic shareholders.

- social liability for the debts of shareholders is limited to the capital contribution subscribed by them. Social creditors cannot pursue debts at maturity without coverage in social patrimonial assets.

- The law establishes mandatory provisions, general conditions for setting minimum capital companies. These conditions concern the minimum number of members, which is set at two (according to art. 10 par. 3 of Law no. 31/1990) and the minimum initial capital, which is 90,000 lei (cf. art. 10 par. 1 of Law no. 31/1990).

- Finally, the memorandum of capital companies must include two essential components, namely: the partnership agreement and Articles of Association. In this case,

[6] Stanciu D. Cărpenaru, *Tratat de drept comercial român*,Ediția a IV-a, updated, Universul Juridic Publishing House, Bucharest, 2014, p. 147.
[7] S. Angheni, *Drept comercial. Profesioniştii-comercianţi*, C.H. Beck Publishing House, Bucharest, 2013, p. 74

editing by founding Articles of Association no longer is optional but is a condition of validity of the constitutive act itself.

2. THE CRITERION ASSOCIATES EXTENT OF RESPONSIBILITY FOR SOCIAL DEBTS

a) companies with unlimited liability

Such companies are called where bear unlimited joint with their entire patrimony for social debts. Belong to this group: society partnerships and limited partnerships.

With reference to the latter is more accurate but requires that the two categories of members who compose it - namely associates and limited partners - have a different scope responsibility for the company's debts. Thus, in what concerns its general partners shall be treated in all aspects of society associates General and, therefore, their responsibility for social debts is unlimited. But limited partners are treated as de facto and de jure, members of the limited liability company and therefore they have limited responsibility for the debts of social benefits. [8]

An emphasis is required, however: although the responsibility of the two categories of partners who formed the company in simple association has a different legal regime, this company fits perfectly into the group of companies with unlimited liability.

In our opinion, this total integration, that doctrine accepts without reservation, is founded on the idea that associates are more representative of society than limited partners, indeed, they include their name on a firm social, they perform management of the company and all they provide the company's management.

b) Limited liability companies

Legal doctrine of limited liability generic names those companies with respect to which the law provides limited liability for the debts of the social partners. Belong to this group: joint stock company limited by shares and limited liability company.

Analysis of the composition of this group is it superficial to the conclusion that between the types of companies that make up this component there is one common element, namely the limited responsibility of the partners, for the rest, capital companies (joint stock and limited partnership shares) and the limited liability company are distinguished by notes of distinction irreducible essential.

However some general features can be retained on companies that make up the group in question:

- Constitutive Act of the companies in this group is made up of the partnership agreement and Articles of Association. One exception to the rule exists, namely the company as a variety of single-member limited liability company whose articles of association consists only of its statutes. One such exception is legitimized by the fact that single-member company being formed with a single corporate involvement in her case there is no question of concluding a bylaw because our legal system contract itself is not allowed.

- in all companies in the group analyzed the law requires a minimum capital as a condition of their constitution.

- Associations of the companies that make up the group we refer to respond to social debt to the extent and value of the subscribed contribution. By consequence, the company's

[8] C. Gheorghe, *Drept comercial român*, C.H. Beck Publishing House, Bucharest, 2014, p. 315.

creditors will not be able to watch about the forced recovery of claims that have to society, the associates.

3. THE CRITERION OF CAPITAL STRUCTURE AND ITS WAY OF SHARING BETWEEN PARTNERS

Distinguished legal doctrine in this regard two groups of companies, namely:

a) companies with shares or interest parties

Companies are called collective shares those entities whose share capital is divided into equal fractions called shares. Belong to these group partnerships (society partnerships and limited partnerships) and the limited liability company.

Law no. 31/1990 shares phrase used only in reference to the limited liability company, but as has been noted in the literature[9], society in collective capital fractions may be designated by the expression of interest parties alike. The difference is basically shares of nominal.

Members having shares are entitled to participate in decision-making in the governing bodies of the company, both on the serious issues that interest the very existence of society, such as, the amendment of the constitutive, changing the legal form of the company, termination of society etc., and on its current business problems. On the other hand, when the balance sheet of the company leads to favourable outcomes, associations are entitled to cash regularly, usually at the end of each year of operation, dividends, a percentage of the profit realized. This percentage is consistent with the value of the contribution of each member to the subscribed share capital formation.

However, the assumptions voluntary withdrawal from society, exclusion from society or company dissolution and liquidation, associations are entitled to a share of the assets of equivalent value corresponding social contribution made by each of them.

The shares have a rather restrictive legal regime. Thus, in principle, they cannot be transferred for the benefit of third parties. And it's natural to be so because of partnerships, and limited liability company that is founded by the element intuitu personae, and transmission by third party social party has the effect of replacing one of the original associations with a third party. However, such a requirement contradicts the substitution of knowledge and mutual trust.

However, the character - in principle - transferability of shares is tempered by the legislature in the legal provision contained in Art. 87. 1 of Law no. 31/1990. Indeed, according to the text "transfer of capital contribution is possible if permitted by the memorandum." So the founders through their agreement resulted in the partnership agreement will have freedom to declare cessible shares and implicitly, and to establish the conditions and limitations under which such a transfer can take place.

On the same reason is art. 202. p.1 and 2 of Law no. 31/1990, according to which: "The shares may be transferred between partners. Transmission to persons outside the company is allowed only if approved by associations representing at least three quarters of the share capital ".

Whether shares was established by the memorandum or was committed by members of a qualified majority of three-quarters of their total number, if held by acts upon death

[9] Stanciu D. Cărpenaru, *Tratat de drept comercial român*,Ediţia a IV-a, actualizată, Universul Juridic Publishing House, Bucharest, 2014, p. 148.

under these conditions, shares may be acquired by third parties only by means of civil law - that assignment, and not by means of commercial law.

b) Joint Stock Companies

Joint stock companies constitute the basis of a memorandum, which must contain specific elements of the contract by both society and the status of the operation. [10] Generic designation of such companies is issuing shares. Obviously, part of this group limited company and limited partnership by shares. Their specificity is that in both cases the share capital is divided into equal parts equal binding, represented by securities called shares.

And holders of shares - generically called shareholders - as well as holders of shares have the ability to participate in the decisions of the management bodies of the company, both on matters of economic management and on issues cover essential aspects of existence the company and amendment of the articles of association, dissolution and liquidation of the company etc. They also have the rights to participate in dividend distribution that occurs periodically, usually annually if the economic activity of society reflected in its balance sheet leads to profit.

The actions mixes naturally in civil circuit and those of them who have credibility on the bond market are quoted on stock exchanges. And it's natural to be so, because in the case of joint stock companies and limited partnership equity element intuitu personae fade, making the change in ownership of the action to be completely irrelevant legal.

Therefore, the actions are essentially transferable. They benefit from the transfer modalities of commercial law which is nuanced and differ depending on the legal nature of the title. Thus, in the case of bearer shares their transmission is operated by submitting material to the title to the new owner, and if registered shares transfer valid title to the new acquirer involves registering the transaction in the register of the issuing company and the reference in the title of identification data new holder.[11]

4. CRITERION COMPANY'S ABILITY TO ISSUE OR NOT SECURITIES

In harmony with this criterion shall be distinguished:

a) companies issuing securities

Companies issuing securities are those companies which are recognized by law empowering to issue securities. Belong to this category of capital companies (joint stock and limited partnership by shares).

The concept of value a title meaning scored here that has commercial value.

Securities category includes shares and bonds issued by capital companies.

After the transmission mode, the shares can be nominative, when the content is placed right holder or bearer mere possession of their property title worth. [12] According to art. 91 p. 2 of Law no. 31/1990 kinds of actions are determined by the instrument of incorporation; if this act is missing such a statement, the shares issued by the company are considered bearer.

The law allows the conversion of registered shares into bearer shares and vice versa, but makes performing such operations prior decision of the extraordinary general meeting of shareholders (art. 92 par. 5 of Law no. 31/1990).

[10] S. Angheni, *Drept comercial. Profesioniştii-comercianţi*, C.H. Beck Publishing House, Bucharest, 2013, p. 74
[11] C. Gheorghe, *Drept comercial român*, C.H. Beck Publishing House, Bucharest, 2014, p. 345.
[12] S. Angheni, *Drept comercial. Profesioniştii-comercianţi*, C.H. Beck Publishing House, Bucharest, 2013, p. 75

As for the transfer of ownership in the case of registered shares, the transmission of ownership occurs by operation made the claim on the title. The legislator leaves, but some freedom founders decisions with reference to determining how the transmission of ownership of registered shares.

a) companies that lack the ability to issue or not securities

Partnerships and limited liability companies have no legal entitlement to issue securities. Corporate securities (which are certificates of party interests in companies of persons and certificates of shares in limited liability companies) issued by these companies do not meet the specific characteristics of the securities.

As company partnerships and limited partnerships, the texts of Law. 31/1990 makes no reference to the capital structure of these companies or, more precisely, in the way he (capital) is divided between the partners. Moreover, art. 87 of the mentioned law speaks assignment of capital contribution if the collective society. However, using such expressions (assignment of capital contribution) suggests that the legislature did not consider a certain structure of capital or a certain way of sharing between members of this society. The same is true in the case of company partnerships, although the text makes no reference cited in this company.

However, the doctrine recognizes[13] that we see a simple omission of law and that if companies in partnerships and limited partnerships, as in the case of a limited liability company, registered capital is split into shares, even if this name is used to refer exclusively to the legislature limited liability company. The author mentions that the company quoted partnerships, capital fractions may be designated by the expression of interest parties alike. The difference of principle shares is nominal.

Therefore, both partnerships and limited liability companies are empowered (implicitly or explicitly) by law to issue titles corporate type certificates for shares, a simple document ascertaining the status of associate and part social belonging proprietor , but they are not securities.

However, the certificate of shares and remains a document of commercial value because it is issued by a company, targeting a structural element of its heritage and is also an evidence of a commercial nature.

CONCLUSIONS

The science of commercial law used several criteria for the classification of companies but we have summarized the presentation and analysis of forms of companies with legal personality established in Romania based on the criteria for classification with legal relevance because of the need correct understanding of the legal status of companies to the right choice by members of the establishment of one of the five forms governed by the Companies Laws.

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[13] O. Căpăţînă, *Societăţile comerciale,* Lumina Lex Publishing House, Bucharest, 1996, p. 83.

3. C. Gheorghe, *Drept comercial român*, C.H. Beck Publishing House, Bucharest, 2014
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