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THE LEGAL FRAMEWORK FOR THE EXCLUSION AND WITHDRAWAL OF A PARTNER FROM A COMMERCIAL COMPANY

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Abstract: *In this paper, we highlight a topic that we consider to be highly relevant and useful: that of the partner in a commercial company. We consider this topic to be relevant because commercial companies are the driving force behind a market economy. In the following sections, we will explain in a clear, precise, and accessible manner what a commercial company is, how a partner can be excluded, and how a partner can withdraw from a company. We will also analyze, with specific references to certain case studies from relevant Romanian case law, situations involving partners in commercial companies, as well as how the courts have addressed these issues.*

Keywords: *commercial company, exclusion of a partner, withdrawal of a partner, fraud, valid grounds*

I. Introductory Remarks

In its broadest sense, a commercial company is a group of persons formed on the basis of a partnership agreement that possesses legal personality, in which the partners, pursuant to their mutual agreement, contribute certain movable or immovable assets to engage in commercial activities with the aim of generating profits and distributing them (https://www.advocate.ro/definitie_juridica_Societate_comerciala_).

Another doctrinal approach, the Rubinian Legal Dictionary, defines a commercial company as a legal entity that comes into existence as a result of a contract concluded between several natural and/or legal persons who agree to contribute various activities and assets to be pooled for the purpose of generating profit (https://www.rubinian.com/dictionar_detalii.php?id=2467).

Another specialized work states that all those who operate a business, as regulated by Article 3, paragraph (2) of the Civil Code—that is, professionals in the broad sense—include merchants, entrepreneurs, economic operators, and persons authorized to carry out economic or professional activities (Savu, 2024).

The Civil Code contains a series of legal provisions, including Article 3, paragraph (3), which states that the operation of an enterprise constitutes the systematic exercise, by one or more persons, of an organized activity, namely the production, management, or disposal of goods or the provision of services, whether for profit or not.

In legal doctrine, an enterprise is regarded as an activity systematically organized by an entrepreneur who utilizes resources such as capital and his own labor or that of others (his employees and/or collaborators), while also assuming the risks of incurring losses (Tuleașcă, 2016:41).

If we also consider the provisions of Article 1881, paragraph (1) of the Civil Code, we observe that a commercial company is that entity, a legal person, through which, based on a validly concluded contract—namely, the articles of incorporation—two or more persons mutually assume the obligation to cooperate in carrying out an activity and to contribute to it through various contributions of a financial nature, property, specialized knowledge, or services, with the aim of sharing the profits or benefiting from the economic results that may ensue (Civil Code, updated 2025).

If we also take into account the provisions of the special law, namely those of the Companies Act, No. 31/1990, republished with subsequent amendments and additions, based on the combined provisions of Art. 1, paras. (1) and (2), commercial companies with their registered office in Romania are Romanian legal entities and constitute associations with legal personality between natural persons and legal entities for the purpose of carrying out for-profit activities.

According to another doctrinal approach, a commercial company is an entity that has legal personality and is regarded as a subject of law, and which is established to carry out profit-generating operations (Bodu, 2014:15).

II. Exclusion of a Partner from a Commercial Company

The exclusion of a partner from a general partnership, limited partnership, or limited liability company may occur in several situations, as provided for in Article 222 of Law 31/1990.

In the first scenario, a partner who fails to make the contribution to which they have committed may be excluded. In order to be excluded in such a situation, the partner must be given notice of default, that is, notified in advance by registered letter with acknowledgment of receipt that, within a reasonable period—for example, 15 days—they must fulfill their obligation as a partner and make the contribution, meaning deposit the sums of money into the company's accounts or transfer the movable or immovable property to the company's assets. If the grace period granted in that registered letter has expired, the partner will be deemed to be in default, and the expulsion proceedings will continue.

Another ground for expulsion from the company applies to a partner with unlimited liability who is in bankruptcy or has become legally incapacitated, as provided by law.

The law also provides for the exclusion from the commercial company of any partner with unlimited liability who interferes in the company's management without having been granted that right or who violates Articles 80 and 82 of Law 31/1990.

Last but not least, a managing partner ( ) may also be excluded from the company if they commit fraud to the detriment of the company ( ) or misuse the company's signature authority or share capital for their own benefit or that of others ( ).

Even general partners in a limited partnership with share capital may be expelled from such a partnership under the conditions set forth above.

As a binding and official interpretation, we note that the High Court of Cassation and Justice, in Preliminary Ruling No. 28/2021 (Decision of the High Court of Cassation and Justice—Panel for the Resolution of Legal Issues, Decision HP No. 28/May 10, 2021, published in the Official Gazette No. 544 of May 26, 2021), ruled that the grounds for exclusion of a partner provided for in Article 222 of Law No. 31/1990, as republished, with subsequent amendments and additions, are not supplemented by the provisions of Article 1928 of Law No. 287/2009 on the Civil Code. We welcome this decision by the Supreme Court and consider it beneficial because it does nothing more than simplify matters and give priority to the application of the provisions of the special law in accordance with the Latin adage *specialia generalibus derogant*, since the provisions of Article 222 of Law No. 31/1990 set forth the strict and exhaustive grounds provided by law under which a partner may be excluded from the company, whereas Article 1928 of the Civil Code uses vague language, namely "valid grounds" for which a partner may be excluded from the company, without even providing examples of what those grounds might be, a fact that has created numerous controversies in legal doctrine and judicial practice regarding this matter.

One point to keep in mind is that exclusion does not take effect automatically; rather, the company or any of the other partners must file a complaint with the competent court requesting the exclusion of the defendant partner. We believe it is important for the plaintiff(s) to request, in addition to the defendant's expulsion from the company, reimbursement of litigation costs in their complaint, and for the court to rule on the structure of the other shareholders' equity interests as well. We raise the following scenario: what happens if the exclusion is requested by another shareholder, but that shareholder filed the complaint only against the defendant shareholder? In such a situation, we believe that the provisions of Article 223(2) of Law No. 31/1990 should apply, in the sense that the court, on its own motion must raise, at the scheduled hearing, the issue of joining the company as a defendant in the case; the company shall be served with the complaint along with copies of the accompanying documents and shall be given the opportunity to file a defense. The elements that the complaint and the answer must contain are set forth in Articles 194 and 205 of the Civil Procedure Code. We consider that in such a dispute, evidence such as documents, depositions, witness statements, expert reports, and physical evidence may be admitted and presented.

Through the reasoned judgment issued by the court following the presentation of the admitted evidence and the adversarial proceedings between the litigating parties, the court may grant or dismiss the complaint. We can imagine a scenario in which the complaint is granted in part, such as when Plaintiff A sues Defendants XY Z SRL and B, C, D and requests the removal of Defendants B, C, and D from the company, but the court grants the claim only with respect to defendant B or with respect to B and C and dismisses the complaint with respect to one or more of these defendants. The first-instance judgment may be challenged only by appeal, as provided for in Article 223, paragraph (3^1) of Law No. 31/1990. The time limit for filing an appeal begins to run upon service of the judgment and is 15 days. The appeal must be filed with the court that rendered the judgment being appealed. After the expiration of the statutory time limit for filing an appeal, if this ordinary remedy has been pursued, the case file will be forwarded to the court of appeals for adjudication. Upon receiving the case file, the Court of Appeals will summon the appellant and the respondents and set a hearing date to resolve the appeal. In its decision, the appellate court may uphold the appealed judgment, in which case, as appropriate, it will dismiss the appeal, set it aside, or declare it time-barred. If the appeal is granted, the court may set aside or modify, in whole or in part, the appealed judgment, as provided for in Article 480, paragraphs (1) and (2) of the Civil Procedure Code.

Once the exclusion decision has become final, it must be filed within 1 day with the Commercial Registry Office for entry into the registry. The operative part of the final court decision is published in the Official Gazette of Romania, Part IV, if the company so requests, as provided for in Article 223(4) of Law 31/1990.

The member who has been expelled shall be liable for any losses or damages caused to the company and shall be entitled to receive the benefits due to him or her up to the date of expulsion; however, he or she may not request their liquidation until they are distributed in accordance with the provisions set forth in the articles of incorporation. The date of exclusion coincides with the date on which the court's decision on exclusion becomes final. A partner who has been excluded shall not be entitled to a proportional share of the company's assets; he or she shall be entitled only to a sum of money representing the value thereof, as provided for in Article 224 of Law No. 31/1990.

The partner who has been expelled must fulfill his or her obligations to third parties for transactions carried out by the company up to the day the expulsion decision becomes final. If, at the time of exclusion, certain transactions are still in progress, the partner will be required to bear the consequences and will not be able to withdraw their share until these transactions are completed, as provided for in Article 225 of Law No. 31/1990.

Upon reviewing the case law, we identified a decision by the Brașov Tribunal (Judgment No. 134/March 18, 2021, of the Brașov Tribunal, published on sintact.ro), which, in its reasoning for granting the action for exclusion, cited several circumstances that fall under the provision of Article 222(1)(d) of Law No. 31/1990. In this regard, the court found that the defendant entered the company's premises at night and removed property from the business—including hairdressing chairs and mirrors from the walls—which caused extremely significant damage, as the plaintiff was no longer able to honor client appointments; that the defendant refuses to participate in the management of the company, refusing to sign its accounting documents, making it impossible to pay taxes and fees, since she left the company's place of business and refuses any dialogue with the other partner and administrator.

In another ruling on a similar case, the Timiș Tribunal (Decision No. 39256 of the Timișoara Court of Appeals dated April 24, 2023, published on sintact.ro) cited the following facts as grounds for the exclusion of a partner and administrator:

- ✓ the defendant's intention to exercise absolute control over the company, with complete disregard for the interests of the other partner and, in particular, to the detriment of the smooth operation of the business they had started together,
- ✓ the conclusion of contracts with third parties on behalf of the company, signed by the director on the same day that the General Meeting of Shareholders was convened, whose agenda included his removal from the position of director on October 1, 2015, indicates that not only did he choose to take advantage of his position in the defendant company, but he also voted while in a conflict of interest. Through the contracts entered into, the defendant created a fictitious payment obligation for SECURITY PROD in an estimated amount of 900,000 lei, representing an advance payment for the use, over the next 7 years, of certain software programs that SECURITY PROD had already produced, authorized, and marketed previously. The contracting companies were established approximately one month before the contracts were signed, and these new entities had as shareholders the son and wife of the respondent, who was the company's director.
- ✓ The defendant's partner was listed as a debtor in the amount of 2,914,617.15 lei according to the company's accounting records for sums withdrawn from its assets as "advances pending settlement" and without justification;
- ✓ The defendant—in his capacity as the company's administrator—assigned, on behalf of the company, the claim held by the company against the defendant (himself), thereby extinguishing his personal obligation to the company; no consideration for this transaction could be proven;
- ✓ the defendant, in his capacity as administrator, entered into a lease agreement between the two companies, thereby creating another obligation for SECURITY PROD to pay the sum of 4,000 lei per month for the room rented in the attic of the building, as rent, once again favoring his son's company.
- ✓ The defendant, in his capacity as administrator, prevented the shareholder from exercising his right of control, even though this right is expressly regulated by Law No. 31, Article 199, paragraph 5 (in the absence of censors or, as the case may be, a financial auditor, each partner who is not a director shall exercise the right of control that partners have in general partnerships);
- ✓ for the year 2015, the company had recorded in its accounts a profit of 860,000 lei, which was to be distributed as dividends; of this amount, only 150,000 lei currently remains on the books, without the company having made any purchases during this period;

All these circumstances regarding the defendant's conduct lead to the obvious conclusion that these acts produced the intended legal effects, namely, the creation of a financial advantage for the defendant—both directly (through the compensation) and indirectly (through the monetization of the software via the two family-owned companies)—and significant damage to the company; by acting in this manner, the defendant deliberately acted against the interests of the company he managed; the fraud committed to the detriment of the company has already been established.

III. Withdrawal of a Partner from a Business Entity

The cases in which a partner may be removed from a commercial company are expressly provided for in Article 226 of Law No. 31/1990. Thus, in the case provided for in subparagraph (a) of this provision, for general partnerships, limited partnerships, or limited liability companies, a partner's withdrawal may occur in the circumstances specified in the articles of incorporation.

In the scenario provided for in Article 226, subparagraph a^1), in the case of a joint-stock company, shareholders who did not vote in favor of a resolution of the general meeting have the right to withdraw from the company and request that the company purchase their shares only if the resolution in question concerns: a change in the company's principal business activity; a cross-border transformation of the company; a change in the company's legal form; a merger or division of the company, including a cross-border one. In such cases, the right of withdrawal may be exercised within 30 days from the date of publication of the general meeting's resolution in the Official Gazette of Romania, Part IV, if the general meeting concerns a change in the company's principal business activity; the cross-border transformation of the company; a change in the company's legal form; and from the date of adoption of the general meeting's resolution if the general meeting concerns the merger or division of the company, including cross-border mergers or divisions.

In the case of cross-border mergers, transformations, and divisions, shareholders who oppose such transactions may exercise their right to withdraw in accordance with the provisions of Art. 251^{30} ; Art. 251^{49} and Art. 251^{69} . Shareholders must submit to the company's registered office, in addition to the written withdrawal notice, the shares they hold or, as the case may be, the share certificates issued accordingly. For the shares of the withdrawing shareholder, an independent authorized expert shall determine the average value resulting from the application of at least two valuation methods recognized by law as of the valuation date. The expert shall be appointed by the registrar of the commercial register pursuant to Articles 38 and 39 at the request of the board of directors or the executive board, respectively. The company shall bear the valuation costs.

Another case of a partner's withdrawal from a general partnership, a limited partnership, or a limited liability company is that provided for in Article 226, paragraph (1), subparagraph (b), of Law 31/1990, namely, the consent of all other partners.

Subparagraph (c) of the same provision cited above provides for the possibility of a partner's withdrawal from the company if the articles of incorporation do not expressly provide for cases of withdrawal or when unanimous consent is not obtained and there are valid grounds. In this case, a court ruling is required, which is subject only to appeal. The court will also rule, in the same judgment, on the structure of the other shareholders' equity interests.

If a shareholder chooses to withdraw from the company in the cases provided for in the articles of incorporation or when all shareholders agree to such withdrawal, the right to withdraw may be exercised within 30 days from the date of publication of the resolution of the general meeting of shareholders in the Official Gazette of Romania, Part IV. The provisions of Article 134(2^1) shall also apply here.

The rights of the withdrawing shareholder with respect to his or her shares shall be determined by agreement among the shareholders or, in the absence of such an agreement, by an expert appointed by them or, in the event of a dispute, by the court. The costs of the valuation shall be borne by the company.

In a case pending before the Bihor Tribunal, the plaintiff A.B.B. filed a claim against the defendants A.A. and XYZ SRL, requesting that the court, in its forthcoming decision, the court order the approval of his withdrawal from his capacity as a shareholder and director of XYZ SRL the cancellation of the claimant's shares, resulting in a corresponding reduction of the share capital, or the acquisition of the shares by the other shareholder should the latter express his consent to do so.

In support of his claim, the plaintiff stated that he and the defendant A.A. had decided to establish XYZ SRL on May 9, 2002, and that the company operated until 2009, when, by Resolution No. 1 of the General Meeting of Shareholders, it was decided to suspend the company's operations for a period of 3 years, effective May 7, 2009. During the suspension period and after its expiration, the plaintiff attempted on several occasions to contact his partner, the defendant A.A., but was unsuccessful.

Consequently, the plaintiff has ceased all business activities through XYZ SRL but remains obligated to file financial statements and balance sheets, even though the company no longer conducts any business or generates any revenue. This obligation requires the plaintiff to bear the costs associated with entering into a contract with an accounting firm, costs that he has been bearing for 9 years.

The plaintiff attempted to resolve the dispute amicably and tried to contact the defendant A.A. either to have the company dissolved, for the defendant to withdraw from the company, or for the plaintiff to withdraw; however, these efforts failed due to the defendant's lack of cooperation.

Thus, the claimant considers that his withdrawal from the company is the only legal solution in the present case. In law, the plaintiff based his claim on the provisions of Article 226(1)(c) of Law 31/1990, which expressly sets forth the cases in which such a withdrawal of a partner from the company may occur, namely: " (c) in the absence of provisions in the articles of incorporation or when unanimous consent is not obtained, a shareholder may withdraw for valid reasons, based on a court decision, subject only to appeal." In this case, the plaintiff demonstrated that the requirements prescribed by law for such a withdrawal are met, namely: the absence of express provisions in the articles of incorporation, the inability to reach unanimous agreement regarding the withdrawal, and the existence of valid grounds justifying the withdrawal.

In the judgment rendered in this case, the court granted the complaint and ordered that the shares of the withdrawing shareholder be acquired by the defendant shareholder who remained in the company. In the same judgment, the Bihor Tribunal also ordered the Office attached to the Commercial Registry of the Bihor Tribunal to make the necessary entries in the Commercial Registry.

In its reasoning, the court stated that the legal provisions set forth in Article 226, paragraph (1)(c) of Law 31/1990 had been met and that the issues raised by the plaintiff were confirmed; specifically, the lack of communication among the shareholders constitutes a sufficiently valid ground for granting the request to withdraw both from the position of shareholder and from the position of director of the defendant company. Regarding the cancellation of the shares, the court noted that the provisions of Law 31/1990 permit such a legal transaction only in the case of a joint-stock company, and since in the present case the defendant is a limited liability company, the lawful and well-founded solution is for the shares of the withdrawing shareholder to be acquired by the shareholder who remained in the company, namely the defendant A.A.[1]

We consider the court's decision to be lawful and well-founded, since the plaintiff based his claim on the provisions of Article 226(1)(c) of Law 31/1990 and succeeded in proving that the articles of incorporation do not stipulate any grounds for withdrawal, unanimity regarding the withdrawal could not be achieved, and he demonstrated the existence of well-founded reasons in that he has been paying for 9 years the costs of the accounting services necessary for filing tax returns and financial statements with the tax authorities, even though this company no longer carries out any activity, causing serious damages to the plaintiff. We cannot accept the attitude of the other defendant, A.A., who abandoned the company during its difficult times, unjustifiably believing that he was entitled only to the company's profits without sharing in its losses in any way. The mandatory legal provisions and the court's decision to grant the complaint regarding the plaintiff-partner's withdrawal from the company and to order the defendant A.A. to acquire his shares serve to sanction such conduct, which is contrary to the law and good faith. The defendant, who remains a partner in the company, will have to continue to fulfill the obligations incumbent upon him in his capacity as a partner, including filing financial statements and tax returns and bearing any other losses.

IV. Conclusions

From the content of this paper, we can highlight a series of conclusions, which are presented below. Thus, a commercial company is a legal entity with legal personality that is established to carry out operations that benefit its shareholders. We consider this definition to be slightly inaccurate because shareholders must also participate in and bear the losses, not just reap the benefits.

On the other hand, a commercial company is legally established through the drafting and notarization of its articles of incorporation; the registration and authorization of the company's operations with the commercial registry attached to the court in the jurisdiction where the newly established company will have its registered office; and the authorization of the company's formation and the issuance of the certificate of registration.

During the course of the commercial company's operations, disputes may arise among the shareholders. To prevent these disputes from dragging on and paralyzing the company's operations, the legislature, through Article 222 of the Companies Act No. 31/1990, as amended and supplemented, has established grounds for the exclusion of partners from the company in the following circumstances: if the partner fails to make the contribution to which they have committed; if a shareholder with unlimited liability is in bankruptcy or has become legally incapacitated; if a shareholder with unlimited liability interferes in the company's management without having the right to do so or violates the provisions of Articles 80 and 82 of Law No. 31/1990; if the managing partner commits fraud to the detriment of the company or misuses the company's signature authority or share capital for his or her own benefit or that of third parties.

Article 226 of Law 31/1990 sets forth the circumstances under which a shareholder may be removed from the company, namely: in the cases specified in the articles of incorporation; if all other shareholders consent; in the circumstances provided for in Article 134; if the articles of incorporation do not expressly provide for cases of withdrawal or when unanimous consent is not obtained and there are valid grounds.

Since the exclusion of a partner is the most severe sanction, it cannot be adopted solely by the will of the shareholder(s); rather, it is imperative that the shareholder(s) seeking the

[1] Judgment No. 198/LP/2021 of October 14, 2021, of the Bihor Tribunal, accessed on Sintact.ro on November 13, 2025.

exclusion of another shareholder from the company file a petition with the competent court requesting that the court order the exclusion of the shareholder from the company. If this mandatory legal obligation is violated and the partners decide to exclude another partner from the company without first applying to the court—believing that they are thereby saving time and money—they are making a grave mistake, because we consider that the consequence can be none other than the absolute nullity of such a decision, since there can be no derogation from mandatory legal provisions that are subject to strict interpretation and application.

In the case of shareholders' withdrawal from the company, the law is not quite as strict, as it allows shareholders to withdraw by resolution of the general meeting in the cases provided for in Article 226, paragraph 1, subparagraphs (a) and (b) , while a final court decision is required in the case provided for in Article 226(1)(c) of Law No. 31/1990.

As a proposal for future legislation, the legislature should clarify the provisions of Article 226(1)(c) of Law No. 31/1990—that is, it should at least provide illustrative examples of what would constitute valid grounds allowing a shareholder to withdraw from a commercial company. On the one hand, we consider it beneficial that the legislature has left it to legal doctrine and case law to define what those valid grounds might be, since we can acknowledge that it is impossible to foresee all such grounds, and the competent courts must assess them on a case-by-case basis; but, on the other hand, if the legislature were to regulate at least a few of these valid grounds—even if only by way of example—it would provide clearer guidelines and directions that could be taken into account.

We believe it is worth noting that all those who wish to become shareholders and form commercial companies, lured by the mirage of quick profits, must exercise greater caution, because just as there are benefits, there are also obligations that shareholders must fulfill, particularly the obligation to bear any losses resulting from the company's operations.

Therefore, we recommend that shareholders who believe the commercial companies in which they operate no longer serve the common legal and statutory purpose of the shareholders withdraw from them in accordance with legal provisions.

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