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Trade Companies and their Classification

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Abstract
The Romanian legislation does not define anyhow the concept of companies. It was the merit of the doctrine, which attempted such a definition, starting usually from the provisions of the Civil Code, which in art. 1491 defines the civil society, for the purpose of the memorandum of the association[1]. For that matter, also in the specialized foreign doctrine (ex. the French doctrine) companies are defined based on similar concepts, but standardized by the Civil Code[2]. The two meanings that the company has to be regarded through, also explain the very specific legal matter, a matter of concepts resulting from understanding the concept of memorandum of association and the company-institution. Thus, the contractual conception, imposed by the development of the contract theory in the last century, explains the existence of the companies starting from the validity conditions imposed to any contract and from the contractual techniques that establish the relationships formed within the society (for example, the company management is based on a mandate contract under which the executive operates).
Keywords: social capital, national companies, economic interest groups

Introduction

The company can be seen in at least two ways:

• A legal institution itself, considered as a body, usually set on associative bases, in order to obtain a certain profit for those who have joined, and in pursuit of commercial activities;

• A contract with its own characteristics, determined by the specific purpose for which the agreement was reached. To be observed that the Romanian legislation does not define anywhere, in none of the means, the concept of company. It was the merit of the doctrine, which attempted such a definition, starting usually from the provisions of the Civil Code, which in art. 1491 defines the civil society, for the purpose of memorandum of association[1]. For that matter, also in the specialized foreign doctrine (ex. the French doctrine) companies are defined based on similar concepts, but standardized by the Civil Code[2]. The two meanings that the company has to be regarded through, also explain the very specific legal matter, a matter of concepts resulting from understanding the concept of memorandum of association and the company-institution. Thus, the contractual conception, imposed by the development of the contract theory in the last century, explains the existence of the companies starting from the validity conditions imposed to any contract and from the contractual techniques that establish the relationships formed within society (for example, the company management is based on a mandate contract under which the executive operates).

The disadvantages of generalization of such a theory lie in the specific issues that shape a company, issues that can not be explained only by contractual arrangements (for example, a company enters actually in the commercial circuit only after its registration at the Trade Register, meaning based on a administrative formality, so that the simple manifestation of the will of the shareholders would not be sufficient to enable the company itself).

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[1] St. D. Cărpenaru, *op. cit.,* p. 143 and O. Căpățînă, *Societățile comerciale,* 2nd edition actualized and complete, Ed. Lumina Lex, Bucureşti, 1996, p. 57-66; R.P. V on i c a, *Dreptul societăților comerciale,* Ed. Holding Reporter şi Albastră, Bucureşti, 1998, p. 19; R. Petrescu, *Constituirea şi modificarea societății comerciale,* Ed. Oscar Prinț, Bucureşti, 1998, p. 9-11; Elena Cârcei, *Drept comercial român,* Ed. AII Beck, Bucureşti, 2000, p. 46 and next

[2] Ph. Merle, *Droit commercial, Societes commerciales,* 3rd edition, Dalloz, Paris, p. 1

However, such a conceptualization could not give any explanation of the existence of the sole proprietorship type companies (limited liability company with sole shareholder, standardized by the Romanian law) because the agreement will, fundamental to any contract, is missing.

This explains why it was tried to define the company through the institutional prism, given the fact that the judicial institution is a set of rules that organizes, in a sustainable imperative way, a group of people having a well defined purpose.

Classification of the companies

A first classification of the companies was achieved through the Law no. 15/1990, regarding the transformation of the former state socialist units in autonomous companies. Given the time when this law was passed, it tried to make a division of the companies, taking into account the equity holder. According to the Law no. 15/1990, the companies were classified as follows: state owned companies; companies with mixed capital (public and private); privately owned companies.

Regarding the situation of the companies owned by the state (which at the time the law was adopted, were the majority), these lacked the quality of being public legal persons. The assets of the company belonged to the company (the company having ownership), the state being nothing else but sole shareholder, holder of the company's capital[3]. Such a solution, moreover, is fully justified, since the law itself, in art. 20, sets out the way in which, after an evaluation of the assets, these will become the property of the company.

After the adoption of Law no. 31/1990, it was reconsidered the classification of the companies by their nature, in companies with equity and companies with partnership. Along with the equity and partnership companies, as a bordering company, which borrows also specific features of equity and partnership companies, was founded the limited liability company, a company that, particularly in the current socio-economic circumstances in Romania, is the most commonly used form.

[3] P. Filipescu, *Dreptul de proprietate şi alte drepturi reale,* Ed. Actami, Bucureşti, 1993, p. 56

The doctrine of specialty[4], proposed also other criteria for the classification of the commercial companies, namely:

• based on the **liabilities of the associates**:

- Companies where the associates have limited liability;
- Companies where the associates have unlimited liability.

• based on the **social capital structure**:

- Companies with social capital divided into shares;
- Companies with social capital divided into shares of interest.

• based on **securities**:

- Companies that issue securities;
- Companies can not issue such securities.

To observe that in reality, all these classifications are circumscribed to the separation of the companies in partnership and equity companies, taking into account of the specific features of the limited liability company. Thus, for example, concerning the liability of the members, it is unlimited in case of partnership companies and limited at the contribution to the social capital, in the case of the capital companies. Limited liability companies as their name indicates, borrowed this feature from the capital companies, associations, with limited liability. Similarly, the capital companies require a social capital divided into shares, while the partnership companies have the social capital divided into shares of interest. For limited liability companies, the social capital is divided into shares, which represent a specific form of the shares of interest[5].

The companies can be classified also by their **settlement mode**. From this point of view, there are:

• Companies settled by the **General Law** (Law no. 31/1990, republished);

• Companies governed by **special laws**: Banking companies governed by Law no. 58/1998; Agricultural companies, governed by Law no. 36/1991 and Insurance companies, governed by Law no. 32/2000.

[5] In theory have been pointed out the similarities that exist, especially in terms of the legal status between the social shares and the shares of interest. To see, I.L. Georgescu, op. cit., vol. II, p. 15-16. This very high similarity between the two structure elements of a social capital makes us believe that ultimately, the social shares constitute an evolved form of the shares of interest, specific to the partnership companies.

Through the Government Emergency Ordinance no. 30/2000, the very **existence of the autonomous administrations** was fundamentally changed, as they were governed by Law no. 15/1990. Under these circumstances, part of these administrations was dissolved, another part was transformed, and finally, those considered functioning in key areas relating to the state interests continued to exist in its original form. In the case of the transformed autonomous administrations, they were reorganized as **national companies** and national societies, which have been founded, are considered trade companies, according to Law. 15/1990. Moreover, such companies with a certain specific are also found in other states. For example, in **France**[6] (Ph. Merle, *Droit commerciales. Societes commerciales, op. cit.,* p. 12-14) are considered to be **companies with a specific legal status:**

• **Co-operative companies,** in which the associates are at the same time either workers employed in the service of that company (in the case of production co-operatives) or suppliers of products for the company, or customers (in the case of consumption cooperatives). The decisions in these forms of companies are adopted under the "one man, one vote" rule;

• Companies that involve the **participation of the workers**, who, necessarily, are established as **joint stock companies**, and allowing the participation of the employees at the benefits and at the effective management of the company.

Similarly, when in Romania through the law was intended to ensure the acceleration of the privatization, a similar formula was introduced by the Law no. 77/1994 regarding the associations of the employees and of the managers of the companies to be privatized, abolished by the Government Emergency Ordinance no. 88/1997 regarding the privatization of the companies, a law through which, among other things, were established the P.A.S.

• **Companies with variable capital**, companies where the capital varies constantly, either by increasing it from payments made by the existing associates or by those who wish to acquire such a quality, or by regularly reducing the capital, after the withdrawal of some associates. Such capital variability clauses are prohibited by the French law, for the case of the joint stock companies, other than the co-operative ones or those founded as such, specifying the variability of the capital, beginning with 1981, when in the French law were assimilated the provisions of the second European Directive from 13 December 1976.

• **Mixed economic companies**, founded by associating the private capital with a public collectivity.

Since 1983, such associations were admitted also at a **local level**, being founded local mixed economic companies. Such companies could be compared with the state-owned companies, given the fact that they necessarily must be founded in the form of joint stock companies, and the majority of the capital is held by the public power. Also, inside the decision system, the majority vote belongs also to the authority, whether local or central. The purpose of founding such companies is the joint exploitation of some public services of commercial or industrial character, or other activities of general interest for the society. To be observed that the **Romanian law** recognizes such associations, but only under **joint venture agreements**, the association thus created, according to the Commercial Code, being without legal personality. The intervention of the state or its organs within such companies is possible, but only if the state participates as a simple legal entity and not as an authority.

• **Nationalized companies**[7], in which the state owns the full capital. Even though after 1986, as a result of new regulations, it was aimed to transfer ownership from the state to the private area, such companies have continued to exist. But to exist, they must expressly and restrictedly be provided by the law.

It can be noticed that, practically such companies are similar, in principle, with the existing autonomous administrations in Romania, in activity areas of highest interest for the national economy, and these, according to the Government Emergency Ordinance no. 30/1997, being nothing else but those expressly and restrictedly provided by the law. Also, in the French doctrine, companies are classified according to the **scope of business**, namely real estate, agricultural area, banking and credit companies, regional development companies, founded as specialized financial institutions, of private law, joint stock and listed on the Stock exchange companies[8].

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[7] It is the case of the Renault plants, which from 1945 became National Administration of the Renault plants, as a result of the manifestation of the national will for a national reconstruction, subsequent to the Second World War. However, after the association with the Volvo company, Renault has turned into a joint stock company (with shares), of common law, in which the state holds at least 3/4 of the voting rights.

[8] For further information see P. Guillcmin, D. de Margerie, Les sociétés de développement regional, Bulletin Joly, 1991, p 675

Also, **partner companies inside the liberal professions** could be founded. In most of the times, these companies are founded as civil companies, but beginning with 1991 they have been created companies for the exercise of the liberal professions in the form of specific companies[9].

At the origin of the creation of such companies, subject practically to the trade regime, was the consideration - as absolutely necessary – of granting for the liberal professions of some specific means to cope with the international competition, to allow the professional groups to build up enough capital to achieve successfully the professional activity, but also to enlist them in a more advantageous tax system.

• The Economic Interest Groups

By the Law no. 161/2003, inspired by the French law (the Economic Interest Groups) the legislature regularizes for the first time the Economic Interest Groups (EIG) and the European Groups of Economic Interest (EGEI) Title V, Chapter II, Art. 232-238, provisions that are supplemented by the Law no. 31/1990, with the Government Emergency Ordinance no. 76/2001, as amended, regarding the simplification of some administrative formalities for the registration and the functioning authorization of the traders.

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[9] Until now, there was the possibility of creating under the form of companies of some associations of liberal professions (such as the accountants, architects or legal advisors). For further information, see J.J. Daigre, Les sociétés en participation de professions liberales reglementees et la reforme des sociétés civiles professionelles, Bulletin Joly 1991, p 369