

THE LIMITED LIABILITY COMPANY VS. THE JOINT STOCK COMPANY. SWOT ANALYSIS

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Abstract

The limited liability company together with the joint-stock company are the most frequent organization forms of the Romanian business environment. There are differences between the way of incorporation, both at the level of the share capital as well as at that of the minimum number of persons required for the set up of the respective companies. According to the field of activity, a company of this type is preferred to the prejudice of the other. With this scientific approach we tried to introduce, in a SWOT analysis, their joint elements as well as those which are specific for these trading companies especially because a similar different organization way is present also in other states of the European Union. We will not say which of these organization ways of the trading companies is better or more permissive from the legislation standpoint but, we will introduce a point of view and, maybe, recommendations for the persons who read this scientific approach and wish to start a business in the future and do not know under which legal form their trading company should operate. Let us not forget the fact that the Romanian legislation allows for the set up of limited partnerships and partnerships limited by shares, but such forms will make the object of another scientific approach.

Key Words: *commercial company, social capital, commitment, social parts, actions.*

JEL Classification: [K22]

1. Introduction

In the Romanian trading legislation, the set up of the various types of companies is stipulated by the Law no. 31/1990, also called the law on trading companies. This law includes provisions related to all the types of trading companies which may be set up in Romania: the joint stock company, company limited by shares, limited liability company, limited partnership and general partnership.

Even if, judging by their denominations, it seems that there might be differences between those companies, at the same time there are common points between the said companies and with our scientific approach, we will have a look on two of those company types. Predominantly, in the Romanian economy the limited liability companies are a majority but, during the last years, the joint stock companies started to be preferred, especially in certain fields of activity.¹

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¹ <https://www.avocat-bucuresti.info/tipuri-de-societati-comerciale> accessed on 12th April 2021.

2. The limited liability company

The limited liability company may be set up by a number of shareholders which may be between 1 and 50 and these shareholders may even be legal persons also. If some years ago a person could have been sole shareholder only in one limited liability company, presently this restriction no longer exists and as such, a person may be sole shareholder in several companies. This amendment of the law was operated because there were very many disputes between the shareholders then when one or more of them wanted to leave the company and they did not get along with the patrimony sharing.²

Decisions in limited liability companies are adopted in the Shareholders' Meeting, there where, usually, the financial statements and the profit distribution are approved, administrators appointed from among the shareholders or from outside the company and such administrators have to be given discharge from administration, as well as other resolutions which are in the interest of the company.

At the beginning of the activity, the general meeting may establish if the company will have censors or a financial auditor, but, if the number of shareholders exceeds 15 then the censors are compulsory.

The company administrators, if they wish to be administrators in other companies also they need the approval of the first company, consent which is secured by resolution of the general meeting of the shareholders.³

In order to finance their activity, the limited liability companies may use their share capital, bank credits or lending of various shareholders, in accordance with the company specifics. Should the financing need be greater then the share capital may be increased by raising the number of shares, proportionate with each shareholder's contribution to the share capital or by the increase of the value of a share. Therefore, there is a flexibility in what concerns the number of shares as well as about their value. (Bainbridge & Henderson, 2016).

From the accounting point of view, the trading companies may run on a single entry bookkeeping system, similar to the one of the certified natural persons, independent natural personal or individual entrepreneurs.

The minimum share capital is of 200 lei, and the value of a share a minimum of 10 lei. The shares are allocated proportionally to all the shareholders but all the shareholders' percentage of ownership cannot exceed 100%. In accordance with the value of the share capital, other values of the share may be set up by the memorandum of association, higher than 10 lei, all the more that this capital is at the basis of the respective company first operations. We need to mention that movable goods or fixed property may be brought as contribution to the share capital

²http://www.euroavocatura.ro/articole/2397/Societatea_comerciala_cu_raspundere_limitata__Particularitati__Infiintarea_si_inregistrarea_in_registrul_comertului accessed on 12 April 2021.

³ Law no. 31/1990.

but first, the said goods must be evaluated to set up their market value. (Căpățână, 1996)

At the end of each financial year, should the company make a profit, such profit may be distributed as dividends to all the shareholders in accordance with the shares ownership quotas. Exceptions cannot be made with the dividends distribution only to certain shareholders and cut other shareholders from receiving dividends just by the fact that the memorandum of associations stipulates other dividends distribution percentage shares. Thus, from the taxation point of view they are taxed with then quota specified by the Taxation Code and, at this moment, that quota is of 5%. If the value of the dividends for a shareholder is in excess of 12 minimal salaries then the respective shareholder also owes the contribution to health insurance which, at this moment, is of 5,5%.⁴

Strengths	Weaknesses	Opportunities	Threats
<ul style="list-style-type: none"> - the easiness with which such companies may be set up; - the low share capital which is necessary for the set up; - reduced number of shareholders necessary for set up; - the diversity of the fields in which such companies may operate. 	<ul style="list-style-type: none"> - the low share capital may lead to the activity limitation of certain trading companies; - limitation of the access to certain tenders due to low capital; - the impossibility to issue bonds for financing; - sometimes, credits are burdensome for these companies; - the shares cannot be transacted on a 	<ul style="list-style-type: none"> - the facility that a natural person may be sole shareholder in several companies; - potential cooperation with similar companies from other countries (partnerships), - from the point of view of human resources, the possibility of finding qualified persons is higher as, usually, such a company has between 1 to 10 employees 	<ul style="list-style-type: none"> - the small share capital may sometimes lead to insolvency and bankruptcy; - the risk to be eliminated from the market by companies with higher capital which, implicitly, have more developed logistics; - the association may not function and the possible remedies are the dissolution due to serious misunderstandings between the shareholders, the withdrawal from the company of one or

⁴http://www.euroavocatura.ro/articole/2397/Societatea_comerciala_cu_raspundere_limitata_Particularitati_Infiintarea_si_inregistrarea_in_registrul_comertului accessed on 12th April 2021.

	regulated market; - turning the limited liability company to a joint stock company is subject to the increase of the share capital and by a minimum of 2 shareholders that need to become stock holders.		several shareholders, the exclusion from the LTD of one or several shareholders
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Table 1 - SWOT analysis for limited liability companies (Author's processing)

3. The joint stock trading company

There are a multitude of factors which contribute to the choice of the legal form and such factors may be the nature of trading operations to be performed, the extent of the share capital, the number of shareholders, etc. but, there are fields of activity, like banking or social insurance for which the legislation imposes the form of joint stock company.

In the case of the joint stock companies the share capital is represented by stock (shares) issued by the company which may be registered or bearer shares. The shares type will be determined by the memorandum of association; or, they will be registered. The registered shares may be issued in a material form, on paper back or in a dematerialized form, case in which they are entered in the shareholders' register. (David, Predoiu & Piperea, 2009)

The share capital may be subscribed and deposited. If, the subscribed shares are not paid in full until the set up date, the company may not issue new shares. The shares must have and equal value and they confer on the holders equal rights. Preferential shares may also be issued with priority dividend and no voting right but this type of shares cannot overcome 1 fourth of the share capital and will have the same nominal value as the ordinary shares. (Freedman, 2003, p. 323; Aspan, 2017, p. 95)

Any paid share gives the right to one vote in the general assembly of the shareholders. The minimal number of shareholders in a joint stock company is 2 and the minimal share capital in a joint stock company is 90,000.00 lei. If one

shareholder leaves the company and for a period of 9 months the number of shareholders is not completed with at least one person then any interested person may request the dissolution of that company.

Shareholders in a joint stock company may be other trading companies, just like in the case of a limited liability company. In accordance with the percentage owned, such companies may influence the company activity by appointing the administrator, determining the operated activities, credit limits, etc. (Aspan, 2017, p. 93).

The general meeting is convened at least once a year, within 5 months from the end of the financial year. It includes, among other issues on the agenda, the appointment of the members of the board of directors, of the supervisory board when the company is managed in a two tiers system, as well as the auditors or, if the company is audited, the financial auditor. The situation in which the company is audited, then there must be an internal auditor, who may be from the company or not.⁵

A joint stock company can also be set up by selling shares through a public offering, which is also a method of financing. Also for financing, the joint stock company can issue bonds and these, like the shares, can be traded on a regulated market. The regulated market is also a source of funding for a joint stock company because a listed company can issue new shares that will be traded on the same market. The minimum value of a share is 0.1 lei and through the articles of incorporation of a joint stock company another value of the shares can be established, higher than the value of 0.1 lei. Instead, the legislation does not provide a maximum limit of the share capital but only a minimum limit of 90,000 lei.

Strengths	Weaknesses	Opportunities	Threats
<ul style="list-style-type: none"> - the minimal number of shareholders with which the joint stock companies may be set up; - the share capital represents a first source of financing for the 	<ul style="list-style-type: none"> - the great share capital which is necessary for the company set up; - the constraint to contract auditors or a financial auditor as well as an internal auditor; - in accordance with 	<ul style="list-style-type: none"> - the possibility of trading the shares on a regulated market; - the possibility of trading bonds on a regulated market; - the possibility of attracting new clients due to the high share capital 	<ul style="list-style-type: none"> - failure to deposit within the agreed time limit the value of the share capital may result in the company inactivity as joint stock company;

⁵ <https://stegaroiu.ro/2020/06/06/societatile-cu-raspundere-limitata-si-societatile-pe-actiuni-scurta-analiza-comparativasocietatile-cu-raspundere-limitata-si-societatile-pe-actiuni-scurta-analiza-comparativa> accessed on 12th April 2021.

<p>company activity;</p> <ul style="list-style-type: none"> - the diversity of the domains in which the joint stock companies may act but, above all, the specific domains in which the joint stock companies may act; - the possibility of bonds issuance for the activity financing as well as of new shares emission - the possibility of turning the joint stock company into a limited liability company. 	<p>the field of activity, the compulsoriness to operate in a two tiers system</p> <ul style="list-style-type: none"> - from the point of view of human resources, the qualified personnel for joint stock company is harder to find because the activity runs on several levels and, as the level is higher the personnel working in such companies has to be more qualified 	<p>(the share capital is a guarantee);</p> <ul style="list-style-type: none"> - the possibility of participation in the structure of other trading companies, which allows for making decisions in the structure and activity of such companies, fact which may allow for the set up of company groups. 	<ul style="list-style-type: none"> - the qualified personnel may leave the company upon receiving a more tempting offer
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Table 2 - SWOT analysis for joint stock companies (Author's processing)

Conclusions

In our scientific approach we sought to make a parallel presentation of the two types of companies that mainly operate in Romania. Of course, other types of companies also operate, as well as other forms of legal organization, such as certified natural persons, independent natural persons, individual enterprises, etc. Almost each of these forms of organization has one or more specific areas of activity. (Government Emergency Ordinance no. 44/2008)

It is important that each company, regardless of the organization, brings its contribution to the economy through the system of taxes and duties they pay to the state, some higher contributions, others lower contributions. But we must not forget that, in recent years, companies such as SMEs have been an engine of the economy and from their contribution the state has been able to finance investments of both local and national importance. (Tricker, 2011, p. 390)

In addition to investments in infrastructure, it is worth mentioning investments in education and research, a goal for which Romania committed itself even more with the accession to the European Union in 2007, to implement the objectives of various funding programs, including a "Union of Innovation "which must lead to a knowledge-based society. (Rus, 2013, p. 946)

Bibliography

1. Law no. 31/1990 on trading companies published by the Official Gazette no. 1066 of the 17th of November 2004 as updated and republished.
2. Government Emergency Ordinance no. 44 on the development of the economic activities by certified natural persons, individual enterprises and family enterprises, published by the Official Gazette no. 328 of the 25th of April 2008.
3. Aspan H., (2017), *Good Corporate Governance Principles in the Management of Limited Liability Company*, International Journal of Law Reconstruction, 1, (1), pp. 87-100.
4. Bainbridge S. M., Henderson M.T., (2016), *Limited Liability: A Legal and Economic Analysis*, Edward Elgar Publishing, Cheltenham UK; Northampton, MA, USA.
5. Căpățână. O., (1996), *Societățile comerciale*, Lumina Lex Publishers, Bucharest.
6. David S., Predoiu C., Piperea G., (2009), *Legea societăților comerciale. Comentariu pe articole*, 4th edition, C.H. Beck Publishers, Bucharest.
7. Freedman J., (2003), Limited liability: large company theory and small firms, *ModernLawReview*, 63, (3), pp. 317-354, <https://doi.org/10.1111/1468-2230.00267>.
8. Rus M.-I., 2013, "*The knowledge triangle*" in a knowledge-based economy, *Annals of Faculty Economics*, 1, (1), 942-947.
9. Tricker B., (2011), *Re-inventing the Limited Liability Company*, *Corporate Governance an International Review*, 19, (4), pp. 384-393, <https://doi.org/10.1111/j.1467-8683.2011.00851.x>.
10. <https://www.avocat-bucuresti.info/tipuri-de-societati-comerciale/>.
11. https://www.euroavocatura.ro/articole/2397/Societatea_comerciala_cu_ras_pundere_limitata__Particularitati__Infiintarea_si_inregistrarea_in_registru_l_comertului/.
12. <https://stegaroiu.ro/2020/06/06/societatile-cu-raspundere-limitata-si-societatile-pe-actiuni-scurta-analiza-comparativasocietatile-cu-raspundere-limitata-si-societatile-pe-actiuni-scurta-analiza-comparativa/>.