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TRADE COMPANIES. ANALYSIS OF THE EVOLUTION OF THEIR ESTABLISHMENT, IN THE LAST 5 YEARS, IN ROMANIA

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Abstract. The transformations that took place in Romania in the early 1990s led to the development of the construction sector in general and of the private sector in particular.

As the old construction companies no longer had the legal framework to operate, given the change of political regime at that time, and unable to carry out their work at random, it became imperative to develop a legislation to regulate this issue. The first normative act in the field, issued in 1990, was Law no. 31 on trade companies.

Along with the emergence of market economy and, implicitly, of the two components, *demand and supply*, some specialists began to organize themselves into working groups in the form of companies, whether they were joint-stock companies (JSC), limited liability companies (LTD) or joint-ventures (JV). In analysing this issue, the paper invoked the normative acts in force regulating the field of the trade companies and the period considered is the one of the last five years.

Keywords: company; trade; law; evolution; dynamics; registration.

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1. Short History

The trade company, together with the other institutions of law, emerged as a result of economic and social causes. As human society has grown and economic and social needs have intensified, people have come to the conclusion that an individual action, regardless of the size of entrepreneurs' labour and financial resources, was not enough to carry out large-scale economic activities. This is how the idea of co-operation between several entrepreneurs to participate together in such activities was born, an idea that has materialized in the sphere of law under the name of a *trading company*.

The trade company with its main characteristics appears in the Middle Ages. Since the 12th century, in the Italian Republics of Genoa, Florence and Venice, maritime and land trade has developed greatly.

Since the modern period, the first major regulation governing trade companies has been the French Commercial Code of 1807. A form of society under the name of "*société générale*" was enshrined under the name of a collective company with legal personality and the associates had unlimited and joint liability for all the obligations of the company. Then the *limited partnership* is regulated.

The French Commercial Code regulates the anonymous society with its two forms: *the joint stock company* and *the limited company by shares*. These forms of companies have been taken over by regulations in other countries, such as Italy, Netherlands, Belgium, Spain, and have been enshrined in the 1887 Romanian Commercial Code by means of the Italian Commercial Code of 1882, which was taken over as a model.

During the nineteenth and twentieth centuries, trade companies have developed a lot. At the end of the nineteenth century, the necessities of commercial practice required the creation of a new form of trade company, namely *limited liability company*, which includes a limited number of shareholders, and their liability is limited to their share of capital. The limited liability company was regulated for the first time in Germany in 1892, where it was taken over from and regulated by France in 1925 and then by other countries. Due to its characteristics, the limited liability company became, together with the joint-stock company, the most widespread form of company in commercial activity in most states of the world (S. Cărpenaru, 1996).

2. The Notion

The notion of company derives from the Latin "*societas*", which means fellowship, association, community, union, comradeship. Since

neither Law No. 31/1990 on Trade Companies nor the Commercial Code provide a definition for the trade company, we will resort to the definitions given by two major law specialists. Thus, Francis Deac defined company as "a contract under which two or more persons (called shareholders) agree to put in common certain goods to carry out a certain activity together in order to achieve and divide the resulting benefits" (1998, p.356).

Stanciu Cărpenaru, in his turn, stated (1996, p.143) that the company can be defined as "a group of persons established on the basis of a company contract and having legal personality, in which the shareholders agree to put in common certain goods for the conduct of trade acts, in order to achieve and share the resulting benefits".

3. Forms of Trade Companies

Law No. 31/1990 on trade companies provides in Article (2) the following forms of trade companies: the joint-stock company, the limited liability company, the joint-venture company, the limited partnership, and the limited company by shares. The first two forms of company being the most common.

3.1. Registration of Trade Companies

According to Article 36 paragraph (1) of the Companies Act, the power to incorporate a company belongs to the Trade Registry Office in the territory of which the register office of the company will be based.

The incorporation of the company is made based on the Incorporation Application, which must be accompanied by the following annexes:

a. the articles of incorporation of the company;

b. the proof issued by the bank, according to which the payments were made, according to the articles of incorporation;

c. proof of declared office and availability of the firm;

d. documents relating to the ownership of contributions in kind and, if among them, there is immovable property, the certificate confirming the lack of encumbrances;

e. statements of the transactions concluded on the company's account and approved by the shareholders;

f. the statement on one’s own responsibility of the founders, administrators and auditors that they meet the requirements of this law.

3.2. Identification Attributes of the Company

Identification attributes of a company are: firm, emblem (optional attribute), registered office and nationality. In order to be identified in the trade

activity, the company must have a name, bearing the name of *firm.* Depending on the type of company, besides name, the company must be accompanied, where appropriate, by the mention “joint-stock company", “limited liability company”, etc.

3.3. Operation of Trade Companies

Law 31/1990 establishes, for each legal form of a company, which are the bodies of the company, the conditions of organization and operation, as well as their duties. Thus, in the case of a limited liability company, the bodies of the company are the same as in the case of the joint-stock company, but with some particularities.

In case of a joint-stock company, which is the most advanced form, there are all three bodies: *general meeting of shareholders*, *directors* and, in certain cases, the Board and the *auditors of the company*.

The General Meeting is the company's decision-making body, consisting of all members and which decides on all key issues of its activity. The decisions taken by the General Meeting in compliance with the law and the Articles of Incorporation are binding on all members.

Directors. The joint-stock company is managed by one or more directors, the number being always odd. When there are more directors, they constitute a board of directors. As a rule, an individual is appointed as a director. But when a legal person has acquired the status of director of the company, it must appoint a permanent representative, individual, by which to fulfil its duties. The office of Company’s director is terminated by: administrator's revocation, waiver, death or incapacity.

Company’s Auditors. The good operation of a trade company implies the need to ensure control over the acts and operations of the directors. Law 31/1990 stipulates that the joint-stock company will have 3 auditors and the same number of substitutes if the articles of incorporation do not provide for a larger number. But in all cases the number of censors must be odd. The auditors are elected by the general meeting of shareholders for a period of 3 years and can be re-elected. The auditors must exercise their mandate personally.

4. Amendment of Trade Companies

Besides the general conditions regarding any amendment of the articles of incorporation, Law no. 31/1990 also regulates certain special conditions, which concern certain specific cases of amendment of the articles of incorporation. These amendments refer to: increase or decrease of the share capital, dissolution of the company, merger and division of the company, transformation of company.

4.1. Merger and Division of Companies

Merger and division of companies are technical and legal procedures whereby companies are restructured when their financial situation so requires.

Merger is the operation by which a concentration of the trade company is achieved. It has two forms: absorption and fusion.

Absorption occurs when one or more companies are dissolved without going into liquidation and transfer all their assets to another company in exchange for the distribution to the shareholders of the company or companies absorbed of shares to the absorbing company and possibly of a cash payment of maximum 10% of the nominal value of the shares so distributed. *Fusion* occurs when several companies are dissolved without going into liquidation and transfer all their assets to a new company they set up under the same conditions as in the case of absorption.

Division is the operation whereby a company, after being dissolved without going into liquidation, transfers to several companies all its assets in exchange for the distribution to the shareholders of the divided company of shares in the recipient companies and, possibly, of a cash payment of up to 10 % of the nominal value of the shares so distributed.

4.1.1. *Effects of Merger and Division of Trade Companies*

The effects of merger and division of companies are:

1.the merger and division shall have as its main effect the dissolution, without liquidation, of the company which ceases to exist and the total transfer of its assets to the recipient company or companies.

2.in the case of a merger by absorption, the absorbing company acquires the rights and will have to be held liable for the liabilities of the absorbed company; in the case of merger by fusion, the rights and obligations of the companies that cease to exist will be transferred to the newly created company;

3.in case of a division, the companies acquiring assets as a result of division are liable to the creditors for the obligations of the company which has ceased to exist by dividing it, in proportion to the value of the acquired assets, except where the division document has established other shares.

4.2. Dissolution and Liquidation of Trade Companies

The causes provided by the law, leading to the dissolution of the trade companies (Article 227 of the Law. 31/1990), are:

a. the surpassing of the deadline set for the validity of the company;

b. the impossibility of carrying out the object of activity of the company or its fulfilment;

c. declaring the company invalid;

d. the decision of the general meeting;

e. the county court's decision, at the request of any shareholder, for solid reasons, such as serious misconduct between shareholders, which impedes the operation of the company;

f. bankruptcy of the company or other causes provided by law or the articles of incorporation.

The trade company dissolves, according to Article 237 paragraph (1) of Law 31/1990, and in the following cases:

1. the company no longer has statutory bodies or these can no longer meet to take decisions;

2. the company has not filed the annual financial statements / other documents with the Trade Registry Office within 6 months after the expiry of the legal deadlines;

3. the company has ceased its activity, has no known registered office or does not meet the conditions regarding the registered office or the shareholders have disappeared or have no known domicile or known residence;

4. the company has not supplemented its share capital, according to the law. These provisions are not applicable if the company was in temporary inactivity, which was notified to the tax authorities and entered in the Trade Registry. The duration of inactivity cannot exceed 3 years.

4.2.1. *The Ways of Dissolving Trade Companies*

The dissolution of the trade company is done in three ways: *as of right (the expiry of the deadline set for the validity of the company), by the will of the shareholders and by a court decision.* Given that dissolution occurs *as of right,* no manifestation of the will of the shareholders is required, and no formality of registration.

When the dissolution of the company takes place through the *will of the shareholder,* the decision shall be taken in compliance with the quorum conditions and the majority provided by the law for the extraordinary general meeting. The act establishing the dissolution of the general meeting in authentic form shall be filed with the Trade Registry Office to be mentioned in the registry, after which it shall be forwarded for publication to the Official Gazette. In case of dissolution of the company by a *court decision*, this is accomplished by the court's ruling.

4.2.2. *The Effects of the Dissolution of the Trade Companies*

The dissolution of the trade company, regardless of the way, has certain effects regarding the opening of the liquidation procedure and the prohibition of new commercial operations. As a result of the opening of the liquidation

procedure, the directors have the obligation, according to the law, to convoke the general meeting of the shareholders for the appointment of the liquidators.

The law stipulates that the prohibition of new commercial operations shall apply, as the case may be, from the day of expiry of the time limit set for the validity of the company or from the date when the dissolution was decided by the meeting of shareholders or declared by a court order (Article 233 paragraph (3) 31/1990).

4.3. Liquidation of Trade Companies

The liquidation of the trade company consists of a set of operations aimed at completing the commercial operations in progress at the date of the dissolution of the company, the capitalization of the assets of the company and the obtaining of the sums of money from them, the collection of the claims of the company, the payment of the debts of the company and the distribution of the net assets among the shareholders.

Since the dissolution, the company is under liquidation proceedings. The act of appointing the liquidators, which mentions the powers conferred on them or the decision that replaces it, as well as any subsequent act that would bring about changes regarding their person or the powers granted, must be submitted by the liquidators to the Trade Registry Office, in order to be entered immediately and published in the Official Gazette of Romania.

Under the law, the liquidator may be a natural person or a legal person. Both the natural person and the legal person designated as permanent representative by the liquidator legal person must be authorized liquidators, according to the law. After the appointment of the liquidator under the law, the directors will be replaced by liquidators. Liquidators are considered to be agents of the company, with all the consequences arising from this quality and fulfil their mandate under the control of the auditors. The liquidation of the company must be completed within 3 years from the date of dissolution. For solid reasons, the county may extend this term by up to 2 years (Article 260 (1) of Law 31/1990).

Case Study

The situation of the incorporation of *companies* at national level and the situation of incorporation of the *construction companies* at national level, as well as the dynamics of the latter (Fig. 1).

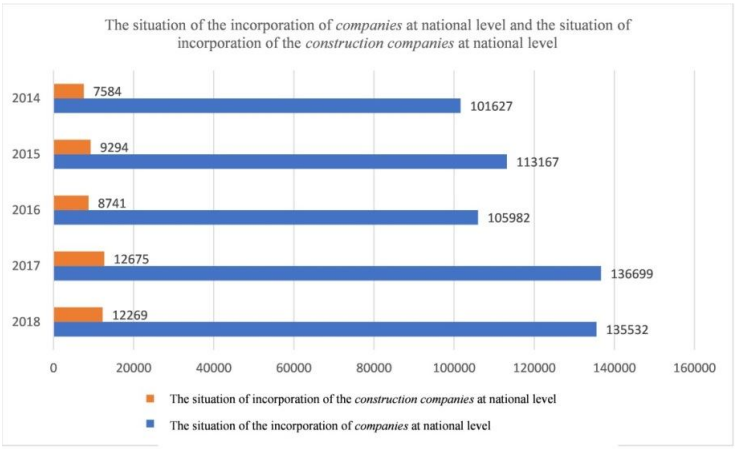

Fig. 1 –According to data from the National Trade Register Office.

Situation of the incorporation of companies at the national level and the situation of the incorporation of companies at the level of the Iasi County, based on the Government Decision no. 166/2003 regarding the granting of some tax incentives to students wishing to set up their own business (Fig. 2).

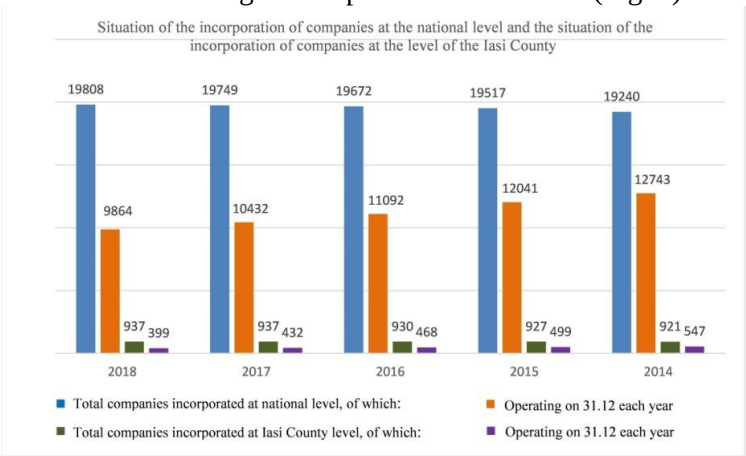

Fig. 2 – According to data from the National Trade Register Office.

Note: The difference between the total number of established companies and those in operation at 31.12 of each year is the number of companies that were taken out of circulation during that year, but after a period of 3 years of operation since the establishment of the company, the situation in which the students who benefited of tax exemptions and other fees that were granted to them at the time of establishment, are no longer bound to return them.

5. Conclusions

The trade company has been in existence since the Middle Ages, it has grown in the modern era and has seen a great development nowadays. In this process, trade companies have played an important role in securing and capitalizing on capitals, for the benefit of entrepreneurs and company.

In order for the company to fulfil its economic role, it has been conceived as an autonomous body, to which the law has given it legal personality.

The conclusions that come out of the analysis of the case study data, show us the evolution of the incorporation of companies in the last five years, the period under investigation. Thus, we can see that as compared to 2014, 22.55% more companies were set up in 2015. During 2016, the number of registered companies was by 5.95% lower than in 2015. During the year 2017, the number of registrations increased by about 45% compared to the previous year, and in 2018 the number of registrations decreased slightly over 3% compared to the previous year.

In order to support future specialists in the development of activities related to the field for which they train during their studies, a series of facilities has been created for them through GD no. 166/2003 regarding the granting of some tax incentives to students who wish to start an own business. Analysing the evolution of the incorporation of the companies, based on the aforementioned normative act, we will notice that their number has decreased by about 23% at national level, and by about 27% at the level of Iasi County, during the analysed period.

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* * * *Legea nr. 31/1990 privind societățile comerciale, republicată.*

* * * *HG nr. 166/2003, hotărâre privind acordarea unor facilitați fiscale studenților care doresc sa inființeze o afacere proprie.*

* * * www.onrc.ro.

SOCIETĂȚILE COMERCIALE. ANALIZĂ PRIVIND EVOLUȚIA ÎNFIINȚĂRII ACESTORA, ÎN ULTIMII 5 ANI, ÎN ROMÂNIA

(Rezumat)

Transformările care au avut loc, în România, la începutul anilor ‘90, au condus la dezvoltarea domeniului construcțiilor, în general, şi a sectorului privat, în special.

Deoarece vechile societăți de construcții nu mai aveau cadrul legal necesar pentru a putea funcționa, dată fiind schimbarea de regim politic din acea perioadă, şi neputând să-şi desfăşoare activitatea la voia întâmplării, a devenit imperios necesară elaborarea unei legislații care să reglementeze această problematică. Primul act normativ în domeniu, elaborat în anul 1990, a fost Legea nr. 31 privind societățile comerciale.

Odată cu apariția economiei de piață şi, implicit, a celor două componente, *cerere şi ofertă*, unii specialişti au început să se organizeze în grupuri de lucru sub forma unor societăți, fie că erau societăți pe acțiuni (S.A), societăți cu răspundere limitată (S.R.L) sau societăți în nume colectiv (S.N.C). În analiza acestei problematici, am invocat actele normative în vigoare care reglementează domeniul societăților comerciale, iar perioada avută în vedere este cea din ultimii cinci ani.