

LEGAL SYSTEM OF PUBLIC LIMITED LIABILITY COMPANIES

University Assistant Ph.D. Candidate **Eugenia Gabriela LEUCIUC**
"Ștefan cel Mare" University of Suceava, Romania
Faculty of Economic Sciences and Public Administration
gabrielar@seap.usv.ro

Abstract:

Whithin this scientific paper, we examine, especially from the perspective of the provisions in the New Civil Code and the law which puts into practice this organic law, the legal system of the public limited liability company, form of company adopted pre-eminently by the quasi-majority of economic operators for its practical advantages presented. Concomitantly, in the elaboration of the work, we take into consideration the statistical data outlining the fact that, by their legal structure, adjustable to small and medium companies, public limited liability companies have reached in present a considerable development.

Keywords : company, share capital, contribution, affectio societatis, shareholders, share

JEL Classification: K12

GENERAL CONSIDERATIONS REGARDING THE CONCEPT OF COMPANY IN THE PERSPECTIVE OF THE NEW CIVIL CODE

In special literature, the company is defined either as a group of individuals incorporated on the grounds of a memorandum of association, each of them having legal personality, and all partners agreeing on sharing certain goods in order to perform acts of merchant profit-making and benefits-sharing purposes(1), or as an institution organized by one or more individuals by means of a constitutive act, on benefits-making purposes, as a autonomous law subject or even without this characteristic, affecting the necessary goods in order to accomplish the act of merchant particular to the statutory object of activity (2).

In our opinion, when defining the notion of company, we should start from the provisions of art.1881 from the New Civil Code, where paragraph (1) defines the memorandum of association as the agreement by which two or more persons mutually bind themselves to cooperate in developing an activity and to contribute with money, goods, know-how or services, in the purpose of sharing the benefits or making use of the economy which could possibly outcome. Each shareholder contributes to the abidance of the losses proportionally with the participation to the distribution of the benefit, unless agreed differently (para. 2)

This definition outlines the defining elements of a company, usually met cummulatively: the necessity of signing an agreement, also named memorandum of association; the constitution of a mutual fund, consisting of contributions of the members; the purpose of the members is that of realizing earnings to share between them; the common will of the members of co-working in the view of obtaining earnings is also known as *affectio societatis*.

Yet, a company cannot be reduced to a simple agreement, but it constitutes a subject of determined law (distinct of the shareholders forming it), with assets allowing it to bound and be liable for their accomplishment, a self purpose and a self-standing organisation.

The legal procedural framework of regulation of companies is represented by Company Act no. 31/1990, republished, with the ulterior adjustments and modifications, provisions which must be corroborated with those of the New Civil Code, pursuant to para. 1887 line (1), in which it is stipulated that the provisions of this procedural act constitutes the common law in matter of companies.

Unlike the provisions in para. 1887 line 2 from the New Civil Code making a clear distinction between different types of companies in considering the form, the nature or the object of activity, in para. 3 of the Company Act are stipulated five forms/types of company, using one single

criterium of enumeration – that of the company's length in what concerns the liability of the shareholders upon the obligations bound by the company (3):

- General Partnership, representing – historically speaking – the first type of company characterised by unlimited and solidary liability of the shareholders for social liabilities.
- Limited Partnership, which social capital is divided in interest-bearing shares, knows two categories of shareholders: sleeping partners who are continuously liable and solidary to the social liabilities and the active partners who are liable up to the concurrence of their contribution to the shared capital.
- Limited Joint Stock Company distinguishes from the limited partnership by the division of its social shares.
- Joint Stock Company is that company where the social capital is divided into shares, negociable and transmittable share securities, belonging to shareholders liable only up to the concurrence of their contribution.
- Private Limited Liability Company is the most recent form of company, regulated only in the XIXth century in Germany (4), which social capital is divided into equal shares. In this case also, the shareholders are liable up to the limit of their contribution to the social capital.

Traditionally, these types of company can be grouped in three categories: i) partnerships: General Partnership and Limited Partnership; ii) joint stock companies: Limited Joint Stock Company and Joint Stock Company and iii) the private limited liability company (which presents particular characteristics of the companies from the first two categories), taking into account the length of the shareholders' liability for the accomplishment of the company's liabilities.

The partnerships, "*intuitu personae*", General and Limited, are characterised by a small number of partners who know each other very well and who count on the honesty, professional skills, solvability and devotion of each other. We have already shown that the liability of the partners is unlimited in the sense that, no matter the contribution of each partner to the foundation of the company, under the form of investment, each partner is liable for the company's debts with his whole personal wealth. May have the quality of partner in a partnership any legal or natural person, merchant or nonmerchant, who, by principle, does not own such quality in other concurrent partnership. For the foundation of the social capital, the partners can subscribe either money capital, natural capital or receivables. The social capital is divided into interest-bearing shares, share securities and they cannot be transmitted, by principle, unless it is stipulated expressly in the articles of incorporation, the continuance of the activity with the inheritor of the deceased under the form of the continuity of services with the successors clause. In such case, the law does not provide a minimum level of the social capital, taking into account that each partner guarantees with his entire wealth for the company's liabilities. The partners in the General Meeting adopt decisions only by unanimity of votes, and if lack of contrary provision, they can manage the company in the vertue of the presumption of a mutual contract of service given in this particular purpose (either the partners are managers, or, pursuant to Law no. 31/1990 republished, the third parties). The control of the economical-financial activity is realized usually by the partners, the appointment of censors being optional.

Closure of partnerships intervenes in certain situations provided by law: the withdrawal, the incapacity, the bankruptcy or the death of a partner, if so the number of partners does not reduce to a one individual, without the existence of any continuity of services with the successors clause in the articles of incorporation or any other way of ensuring the plurality of members, hence we deduce that the minimal number of partners for partnerships is two (enforced by the bilateral character of the articles of incorporation as well).

Unlike the general partnership, the limited partnership comprises two categories of partners: sleeping partners who are unlimitedly, solidarily and subsidiarily liable for the accomplishment of the company's liabilities; being able to occupy the function of managers of the company. The second category is formed by active partners who are liable only up to their contribution to the

social capital, reason why they are not allowed to operate in the behalf of the company, unless they are provided with a special statement of authority for this purpose.

Joint stock companies "*intuitu pecuniae*" are characterized by a great number of partners, or shareholders, whose main liability is to subscribe to the social capital which minimal quantum, stipulated imperatively by the law, is of 90.000 lei (the equivalent of 25.000 euros).

The social capital is divided into shares, or share securities, negociable and transmittable, which can be transacted on organized financial markets. Shareholders can subscribe either money, either natural capital in the view of founding the social capital, or receivables, under the provisions of law. The liability of each shareholder for the trade liabilities of the stock company is limited to the quantum of the social contribution of each of them.

The company's will is set within the General Meetings of the Shareholders - ordinary and extraordinary, when the decisions are adopted on the principle of majority of the shareholders' votes.

For the management of a stock company, the shareholders may opt for one of the two systems of management: unitary or dualist systems. According to the unitary system, the company is managed by a single uni or pluripersonal organism of administration, represented by a board of directors. It can authorize the management of the company to one or more directors, one of them being named general director (para. 143 line 1).

In the conditions of the dualist system, the stock company is managed by two organisms: the directorate and the surveillance board, each of them having distinct and clearly stipulated by law attributions. The financial statement of joint stock companies opting for the dualist system of management are submitted to financial audit (para. 160 line 1 ind.1).

If the management control of the companies which annual financial statements are not submitted to financial audit, the General Meeting of the Shareholders will appoint a commission of censors composed by at least three censors and suppliants, unless the articles of incorporation stipulate a larger number (para. 159 line 1).

Beside the general, common causes of dissolution of companies, the stock company can be dissolved on account of specific causes: the decrease of the net capital to less than half of the amount of the subscribed social capital; the decrease of the social capital under the minimal compulsory level of 90 000 lei or the decrease of the shareholding to a single shareholder for a period longer than 9 months.

Starting from these particularities of each category of company, we may point out that the public limited liability company has a configuration of its own, boardly joining the personal element and the assets, best answering to certain concrete economical purposes. (5)

DEFINING CHARACTERISTICS OF THE PUBLIC LIMITED LIABILITY COMPANIES

The public limited liability company joins the features of the partnerships and those of joint stock companies.

This type of company presents a series of resemblances with the partnerships, as follows: the element *intuitu personae* imposes a maximal number of partners (50 individuals); the social capital is divided into equal shares – share securities without circulatory value, being transmitted by third parties by cession under restrictive conditions of quorum of vote; the adoption of the decisions within the General Meeting of the Shareholders regarding the alteration of the articles of incorporation needs the unanimous vote of the shareholders; the exclusion of the shareholders from a public limited liability company or the representation of the company in relation with the third parties are governed by the same rules, stipulated also for the partnerships.

The public limited liability company has close resemblance with the joint stock companies in what concerns the limited liability of the shareholders for the company's liabilities; at the foundation, it is issued a memorandum of association joining the typical stipulations for the act and articles of association (except for the single shareholder company); the performance of the right to

vote in the General Meeting of the Shareholders depends on the number of shares held by each shareholder, the rule of the majority governs the normal life of the company; there are allowed only contributions in money or in nature; it is imperatively established by the law a minimal quantum of the social capital; the shareholders are allowed to withdraw from the company; the special causes of dissolution of the company (the decrease of the social capital under the minimum imposed by law, the increase or the decrease of the maximal or minimal number of shareholders provided by law).

Alongside these defining characteristics, the public limited liability company, as any other type of company with legal personality, is defined also by a merchant nature, statuted in para.1 line(1) from acts of merchant, that is acts of production, merchandise or services (para.8 line.(2) from Law no. 71/2011 in order to put into practice Law no. 287/2009 concerning the Civil Code, issued in M. Of. no. 409/2011). The merchant aspect of the public limited liability company delimits it neatly from the private companies, simple companies, those with legal personality and professional companies with or without legal personality (para. 7 let. a-c of Law 71/2011) and determines the application of the provisions of Law no. 31/1990 and of Law no. 26/1990.

Also, the public limited liability company is a distinct subject of law of the partners who found it and joins all the constitutive elements of a legal person of private law: an self-standing organization and proper assets, affected to the accomplishment of a certain lawful moral purpose, in accordance to the general interest (para. 1, line. 2 Company Act corroborates with para.187 and the following of the New Civil Code). On the other hand, the public limited liability company has capacity of use and exercise, as holder of rights and liabilities, participates directly and straightforwardly in the legal relations and is liable for the bonds in front of the third parties. As any law subject, the public limited liability company individualizes within the legal relations by: sign, registered head office and/or other offshoots, emblem, nationality inclusively. According to para. 1 line 2 of Company Act, companies with the registered head office in Romania are Romanian legal persons, being governed by the Romanian legislation. Special doctrine considers inefficient the unicity of the criteria of determination of the company's nationality, as it leaves unsolved the problem of the foreigners' condition, the foreign investments usually operating with a distinct criterium – that of the control performed by the shareholders over the company.(6)

FOUNDATION OF THE PUBLIC LIMITED LIABILITY COMPANY

Public limited liability company can be founded by incorporation of a maximum of 50 individuals or – with title of exception – by the expression of will of a single person, in the view of developing acts of merchant in any domain of economic activity, but for those which, according to special law, are reserved to economic operators organized under a different company form.

Doctrine stipulates that the analysis of the foundation of a public limited liability company firstly needs theoretical clarifications referring to the constitutive and/or institutional aspects of its legal nature.

For the purpose of a public limited liability company's foundation, the fondatory partners must accomplish certain conditions provided imperatively by the law. In such sense, there will be realized a series of procedures, as follows: reservation of the company's name, subscription, on the behalf of the company, of the amounts representing the contribution to the social capital; drafting of the memorandum of association under the form of the certificate under private signature, with certified date, (being compulsory to be certified in authentic form, if the contribution is a fixed asset), the statutory declarations of the partners, the managers and the censors if they accomplish the conditions provided by law etc.

In the case of the public limited liability company, the memorandum of association, expressing the agreement of the shareholders to constitute a mutual fund from their individual contributions, with the intention of collaborating in the development of an economical activity and of the state and, exceptionally consists of the memorandum in the case of the single shareholder company.

In the analysis of the conditions of validation of the memorandum of association (respectively of the act of association), we must bear in mind both the provisions in para. 1882 and the following of the New Civil Code, and those in para.5 and the following of the Company Act, all referring to: the capacity of the shareholders, the agreement of shareholders, the object and the cause of the act of association, as in the case of any other legal document. The agreement expressed in the purpose of signing the constitutive act must accomplish the following conditions: provenience from a person with power of discernment, expression of the intention to produce legal effects, exteriorization, uncorruptcy (unaffected by error, violence). In order for it to be availablely signed, the constitutive act must have a determined object, possible, lawful and moral, as well as a real, lawful and moral cause.

If these availability conditions mentioned in the paragraph above are stipulated by the law for any legal document, for the memorandum of association, the law establishes certain specific elements: the constitution of a mutual fund by individual contributions of subscribed amounts to the social capital, the intention of the shareholders to collaborate for the development of the activity (*affectio societatis*) and for the participation to the division of the benefits and the abidance of the losses.

We underline the fact that the legislator pays a special attention to the drafting of the memorandum, establishing expressly the mentions to be comprised in such act.

Special doctrine stipulates that the accomplishment of the conditions of form *lato sensu*, provided imperatively by the Company Act no. 26/1990 regarding the Commerce Registry, involves covering a procedure and performing the publicity, having as finality the achievement of the legal personality, according to para. 200, line 2 corroborated with para. 205, line.1 of the New Civil Code (7).

Synthetising, the procedure implies a consensual phase, consisting of the elaboration of the memorandum of association, followed by a final phase in which are accomplished the publicitary formalities. (8) The disobeyance of the fond and form conditions – *lato sensu* – regarding the foundation of a public limited liability company may lead to the annulment of the company.

At the foundation of the company, each shareholder has the liability to constitute a contribution to the social capital, which can be of any economic value, presenting interest for the activity of the company. The shareholders' contributions should not be equal in value, or have the same object, nor the contribution of a shareholder has a unitary object.

Up to the limit of the contribution, the shareholder becomes debtor of the company, and after the integral subscription of it – its creditor, with all the consequences immerging from this quality. Non-performance of the contribution has the signification of the non-execution of the liability, with consequences stipulated by law (thus, the shareholder who overdues the deposit of the social contribution is liable for the damages caused to the company; and the shareholder who didn't accomplish the liability to contribute with money, owing also the legal interests since the date OF the subscription).

The totality of the shareholder's contributions who participate to the foundation of the company form the social capital of the company which value can be adjusted during the existence of the company. In case of decrease of this value under the limit imposed by law, under 200 lei, the shareholders are obliged to complete or reduce the social capital, before the division or distribution of benefits. Having the role of general pledge of the creditors, the social capital must be real, which implies the effective entrance in the company's assets of all the goods as contributions from the shareholders, as well as the keeping in permanence in the company's assets of certain goods which values should not be smaller than the social capital. (9)

The social capital determines the benefits and calculates the company's resources. The social capital of the public limited liability company is divided into fractions – shares, of equal value; the minimal value of a share being 10 lei. According to law, shareholders achieve a number of shares, proportional to the value of each contribution, in exchange of the contribution.

Shares issued by the public social companies do not constitute negociable share securities and are transmittable: to the other shareholders, by decision of the General Meeting of the

Shareholders; to the inheritors, in case of continuity of services with the successors clause; to the third parties, by cession of shares, decide by vote of the shareholders, representing $\frac{3}{4}$ from the social capital.

The managers of the public limited liability company may issue, at demand, a certificate of good standing of all the rights on the shares, but mentioning that such certificate cannot serve as title for the transmission of the rights certificated, under the sanction of null transmission. Thus, the share certificate cannot be transmitted (neither by bill of exchange, by material remission, nor by registering the transmission). By their specificity, as shown in the special literature, certificates of shares can be qualified as titles of legitimation, lacking the constitutive character and literary of the credit titles. (10)

In principle, shares grant the holder the following rights:

- to participate to the General Meeting of the Shareholders and to vote, rights performed according to the principle of proportionality between the number of votes and the number of shares held;
- to elect or to be elected in the company's management organisms;
- to receive the dividends representing the quota-part from the benefit paid to each shareholder;
- to be informed on the management of the company, being able to consult the company's documents and duplicate certified copies of them;
- to control the way of management in the company;
- to obtain, in case of liquidation of the company, a part of the resulted net asset, proportional to the contribution of the shareholder at the foundation of the company (the contribution and eventually other contributions which will be established by the final balance sheet).

The main obligations of the shareholders are:

- to subscribe the entire contribution;
- to abide the losses of the company proportionally to the countervalue of the contribution.

The purpose of the company is that of realising benefits from the commercial activity developed and dividing them to the shareholders. The quota-part of the benefits is know under the name of dividend. They are paid in the term established by the General Meeting of the Shareholders, or in special laws, but not later than 6 months since the date of approval of the anual financial statement afferent to the closed financial year, on the contrary the company will pay compensation damages. The dividends are distributed only from profits determined according to law, on the contrary the shareholders who received them are obliged to return them, if they admitted or should admit the irregularity of the distribution. The procedure regarding the restitution of the dividend is prescribed in term of 3 yrs since the date of their distribution.

Since the commercial activity could register losses instead of benefits, thanks to the social relationship which binds them, the shareholders must participate to the losses as well. Law prohibits that a shareholder perceives all the realized earnings and be exonerated of participation to the losses (leonine clause); each shareholder participates to the benefits and the losses of the company up to the quota of participation to the social capital, unless provided differently by the articles of constitution.

The resources of the company are the amounts of money retained from the net profit for covering, at needm the receivables of the social creditors. The resources are lawful, also named reserve fund, and optional. In order to create the reserve fund, it is assigned annually at least 5% from the profit, until it reaches minimum $\frac{1}{5}$ from the social capital. This reserve fund also called legal resource, must be completed each time it is considered a decrease of its quantum under the minimum imposed by law. As well, the increase of the social capital determines new retains from the profit for the increase of the reserve fund. The reserve fund has a precise destination, being used only in case if the company registeres losses of capital or of net asset. There can be created also optional funds which are in fact the amounts of money destined by the company either for the

performance of investments, or the development of marketing activities or for covering certain losses in the assets under objective circumstances.

ORGANISATION AND FUNCTIONING OF PUBLIC LIMITED LIABILITY COMPANIES

Such any legal person, the company has not an organic existence, thus, it's will is expressed by it's organisms, respectively: management, execution and control organisms of the company. The will of the company is formed within the General Meeting of the Shareholders and brought into accomplishment by the executive (management) organisms represented by the manager (gerent) or the managers. The control of the manager's activity is realized by the shareholders (in the virtue of the rights of information, control and audit) or, in certain cases, by a specialized organism, the censors of the company.

The management of the company is realized by the shareholders within the General Meeting of the Shareholders by adopting the decisions of the regular problems for the life of the company, as well as on certain special problems, pointing fundamental elements of the company.

Starting from the specific of attributions and, in the case of the public limited liability company, we make the distinction between ordinary and extraordinary meetings, although the legislator regulates such types of general meetings exclusively in the case of joint stock companies. In principle, the ordinary general meeting of the shareholders takes place at least once a year, not longer than 3 months since the closure of the financial year, in the purpose of: approving the balance sheet, after consulting the report of the managers and censors, establishing the budget of incomes and expenses and, if case, the program of activity, for the next financial yea; fixing the dividend due to the shareholders; naming the managers and/or the censors etc. Usually, the general meeting of the shareholders decides by vote representing the absolute majority of shareholders and shares (it is then required, cumulatively, the percent of 50% plus one of the number of shareholders, as well as the condition that they represent half plus one of the total shares). Unlike that, the extraordinary general meeting of the shareholders adopts decisions with unanimity of votes in problems implying the adjustment of the memorandum of association, like: increase or decrease of social capital; change of object or form of company; prolongation of the company's duration, change of registered head office; withdrawal or exclusion of a shareholder or incorporation of new shareholders, merge with other companies; dissolution of the company and any other aspects concerning the alteration of the memorandum of association.

The will of any company is expressed in the general meeting, but it is put into practice by the management organisms of the company. According to Law no. 31/1990 republished, with the ulterior adjustments, the public limited liability company can be managed by one or several director, shareholders or third parts, who can action together or separately. It seems worthy to outline tha fact that *mutatis mutandis* the provisions referring to the management of companies in general partnerships (para. 75, 76, 77 line 1 and 79) applies correspondently also to public limited liability companies. Managers are assigned either by memorandum of association, or ulteriorly by decision of the General Meeting of Shareholders and are invested a 4 year mandate, presumed to be of 2 years, unless stipulated differently in the appointment act. It can be appointed as manager either a natural person or a legal person which pledges. Managers can sign any legal document necessary and useful for the accomplishment of the object of activity of the company, except for those which value excels half of the financial value of the company's shares, for which it is needed the aproval of the extraordinary general meeting of the shareholders. Shareholders' liability is governed by the stipulations of the contract of service from the civil law, and in case of plurality of managers, liability is solidary. (11)

Control of the management in joint stock company is ensured by censors who survey on the good functioning of the company by developing an audit on the managers' activity. Censors, elected by the General Meeting of the Shareholders, form a committee of three members and a suppleant (unless it is provided a lager number by the memorandum of association); in all cases, the number

of the censors must be impair. The control of the management is regularly made by the shareholders, yet, when their number exceeds 15 persons, the censors' appointment is mandatory. Exceptionally, also in the case of public limited liability company, financial statements must be submitted to financial audit. Censors' liability is regulated by the mandate stipulations, their annulment being decided by the extraordinary general meeting of the shareholders only.

The adjustment of the conditions in which is developed the activity of a company may determine the necessity of its modification. In such sense, the shareholders may consider useful the increase or decrease of social capital, change of object of activity or of its legal form, etc. Because the structural or identity elements to be altered are established by memorandum of association of the company, their alteration imposes practically the alteration of the memorandum itself. (12)

The alteration of the memorandum of association is made possible by will of shareholders, while formulated within general meetings. In the case of joint stock companies and limited partnerships the decision may belong to the extraordinary general meeting of the shareholders, otherwise in the hypothesis of general partnerships and public limited liability companies, the decision must be unanimously taken by the General Meeting of the Shareholders. Such meeting takes place in order to alter the memorandum of association, which should be recorded in a certificate, representing the additional act of the memorandum. The additional act submits to the formality of registration to the Commerce Registry (Unique Bureau). In what concerns the lawfulness control of the additional act, law distinguishes between the one drafted by the authorized judges, concretized in a closure (in the case of the most important modifications: change of the main object of activity, change of social capital, fusion and division, decrease or prolongation of the duration of the company, dissolution and liquidation, change of registered head office etc) and the one issued by a resolution of the Unique Bureau which authorizes the other modifications.

REORGANISATION AND CESSATION OF A PUBLIC LIMITED LIABILITY COMPANY

According to provisions of para. 233 line1 from the New Civil Code, corroborated with those of the Company Act – para. 238 and sq., the reorganization of a public limited liability company realizes by fusion and division, by obedience of an express procedure and imperatively provided by special law (Company Act).

Usually, as an effect of the reorganization one or several companies involved in this process cedes its existence.

Cessation of a public limited liability company implies two distinct phases – that of the dissolution and that of the liquidation, except for the case when the company ceases existing as a consequence of the merge.

Dissolution represents the typical way of cessation of the public limited liability company and marks the cessation of its activity and the entering of the company in a new form of existence, characterised by a limited legal capacity to accomplish the liquidation procedures.(13) According to para. 227, line1 Company Act, the company can dissolve by: lapse of time established by the duration of the company, impossibility of achieving the object of activity of the company or its achievement, statement of nullity of the company, decision of the General Meeting of the Shareholders, court's decision, bankruptcy etc. Besides these general dissolution causes, the way they are qualified by special doctrine, there is stipulated a series of specific causes of the public limited liability company, as follows: when by bankruptcy, incapacity or exclusion of any of the shareholders their number reduces to one (unless stipulated differently, the transformation of the company in single shareholder company), exceeding of the maximal number of shareholders, decrease of social capital under the minimal limit provided by law (unless shareholders decide its completion before the term provided by law).

As a consequence of the interfered dissolution of the company, there begins the liquidation procedure, which is a phase governed by certain principles:

- all documents issued by the company will mention the fact that it is in liquidation;

- liquidation is accomplished in the interest of the shareholders, which means liquidation may be demanded by the shareholders only with the exclusion of the company's creditors; shareholders' meeting appoints the liquidators (who undertake the management of the company from its managers) and establish their powers; the conditions of the liquidation themselves can be settled by memorandum (by the shareholders);
- liquidation of company is mandatory because company cannot remain in the dissolution phase.

Liquidation procedures imply both the liquidation of the assets by transforming the company's goods into money and receiving the receivables the company has for its third parties, and the liquidation of the liabilities, consisting in the payment of the debts the company has for its creditors, the net assets resulted being finally divided between the shareholders. Such operations must happen until 3 years passed since the date of dissolution. Finally, the liquidators must solicit the radiation of the company from the registry held by the Unique Bureau (date of end of the company's legal personality); the registries and the company's documents must be kept archived for 5 years after the date of their deposit to the Unique Bureau of the Chamber of Commerce.

Both natural and legal persons may hold the quality of liquidators with the condition that they accomplish the criteria provided by law. In accomplishing the afferent liabilities, the liquidators are as liable as the managers and are submitted to the censors' control. The document of appointment of the liquidator by the general meeting (or, exceptionally, by court, when the circumstances of the convocation and the decision of liquidation are not accomplished) will be deposited at the Commerce Registry (the Unique Bureau).

FINAL CONCLUSIONS

The problematics extremely complex of the companies, especially that of the public limited liability company, represents a reference within my preoccupations. Within this paper, I analysed the public limited liability company in the context of the major modifications of the Romanian legislation, by entering into force of the New Civil Code, also bringing adjustments to the Law no. 31/1990 regarding the companies, Law no. 26/1990 regarding the Commerce Registry and annuls the Commercial Code.

As well, we conclude by stating that, taking into consideration the practical importance presented by this type of company, the public limited liability company has met during time transformations which enriched and reconfigured its legal system. Thus, the public limited liability company rejoices of the following facilities: limitation of the number of shareholders, hence the company's closed character, limitation of the personal liability of the shareholder to his share and limitation to dispose freely, by cession, of the share.

ENDNOTES :

- (1) St.D.Cârpenaru, *Tratat de drept comercial*, Editura Universul Juridic, București, 2009, p. 156
- (2) O.Căpățînă. *Societățile comerciale*, Editura Lumina Lex, București, 1996, p. 15
- (3) C.Lefter, *Societatea cu răspundere limitată în dreptul comparat*, Editura Didactică și Pedagogică, București, 1993, p. 15
- (4) C.Lefter, *op.cit.*, p. 14
- (5) C.Lefter, *op.cit.*, p. 19
- (6) see O.Căpățînă, *op.cit.*, p.73 and sq.
- (7) C.Lefter, *op.cit.*, p. 60
- (8) O Căpățînă, *op.cit.*, p. 133
- (9) C.Stoica, S.Cristea, *Drept societar*, Editura Universitară, București, 2008, p. 110
- (10) C.Stoica, S.Cristea, *op.cit.*, p. 123
- (11) C.Stoica, S.Cristea, *op.cit.*, p. 142

(12) C.Stoica, S.Cristea, *op.cit.*, p. 162

(13) C Lefter, *op. cit.*, p. 145 and sq.

BIBLIOGRAPHY:

1. Baias Fl.A., *Prefață la Codul Civil (Legea nr.287/2009)*, Editura C.H.Beck, București, 2009
2. Căpățînă O., *Societățile comerciale*, Editura Lumina Lex, București, 1996
3. Cărpenaru Stanciu D., *Tratat de drept comercial*, Editura Universul Juridic, București, 2009
4. Lefter Cornelia, *Societatea cu răspundere limitată în dreptul comparat*, Editura Didactică și Pedagogică, București, 1993
5. Motica Radu I. și Bercea Lucian, *Drept comercial român*, Editura Lumina Lex, București, 2005
6. Schiau Ioan și Prescure Titus, *Legea societăților comerciale nr.31/1990. Analize și comentarii pe articole*, Editura Hamangiu, București, 2007
7. Turcu Ion, *Tratat teoretic și practic de drept comercial*, Volumul II, Editura C.H. Beck, București, 2008