Some specific aspects concerning the company by shares

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Abstract

The company by shares is the prototype of company of capitals, since this legal form of company is set up and functions only based on the contributions made by the associates, who are liable for the social obligations within the limits of these contributions, so that the person of the associates or the trust between them is irrelevant. In exchange for the contributions they make within the company, the shareholders receive negotiable instruments, which can be transmitted freely. From this perspective, the company by shares was conceived as a form of organizing large-scale activities that require and concentrate important funds, made available to the company by a large number of shareholders. These significant aspects, which have influenced the legal regulation applicable to it, characterized by excessive formalism, complicated and strict rules, with countless conditions imposed by the law in order to protect both third parties and minority shareholders, lead to the conclusion that this legal form of company is not appropriate for small activities with a reduced number of associates, because the advantages of choosing this form of company are not justified, as compared to the disadvantages it implies. Within this context, we consider that an analysis of this form of company, even though is not intended as exhaustive, but highlights particular significant aspects that underline its juridical specificity, may appear important and particularly useful, both for analysts in law and practitioners.

Keywords: *company by shares, specific aspects, companies of capitals, limited liability, General Meeting of Shareholders.*

JEL Classification: K22

1. Introduction

The company by shares is the prototype of company of capitals[2], since this legal form of company is set up and functions only based on the contributions made by the associates, who are liable for the social obligations within the limits of these contributions, so that the person of the associates or the trust between them is irrelevant. In exchange for the contributions they make within the company, the

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[2] According to the traditional classification of the companies regulated by Law no. 31/1990 republished, a distinction is made between the companies of persons, whose setting up and functioning are determined and based on the personal element, and the companies of capitals, in which the personality of the associates is indifferent, and their setting up and functioning only take into account the material element, namely the contributions of the associates.

shareholders receive negotiable instruments, which can be transmitted freely. For these reasons, the company by shares represents a legal form which is particularly appropriate for large-size companies, having the registered capital of a significant value and a large number of shareholders.

As far as the legal framework applicable to the company by shares is concerned, we emphasize that it is included among the forms of company prescribed by article 1888 of the Civil Code[3], although its legal regulation is not contained in the Civil Code, but in the Law no. 31/1990 on companies, republished[4], amended and completed, taking into account the choice of the Romanian legislator, subject to criticism at least in relation to the coherence of legal provisions that compose the legal regime of companies, to maintain the special legislation applicable to companies having legal personality. Consequently, in Romania, the company by shares is mainly regulated by the Law no. 31/1990 on companies, republished, amended and completed. The legal provisions contained by the special law must be completed with the rules applicable to companies, in general, and to the simple company, in particular, included in the Civil Code, which constitute the common law in relation to companies, being applicable in the silence of the special law regulating other forms of companies. In addition, to the extent that the shares issued by the company are quoted on the stock exchange, namely on the regulated market or the alternative trading markets, it will also be governed by the applicable legal regulation in the field of capital markets[5].

Concerning the European legislation in the field of companies, it is worth mentioning, first of all, the provisions of article 54 of the Treaty on the Functioning of the European Union, which provides the freedom of establishment of companies in the European Union. In order to ensure completely the freedom of establishment, significant efforts have been directed towards the coordination of national laws, achieved mainly through directives[6], which allowed largely the coexistence of the specificity of the different legal systems within the European Union. However, there were not neglected the efforts to create a company of European dimension, which had resulted, in the matter under analysis, in the establishment of the

[3] Law no. 287/2009, republished in the Official Gazette of Romania, Part I, no. 505/15.07.2011.

[4] Republished in the Official Gazette of Romania, Part I, no. 1066/17.11.2004.

[5] In particular the Law no. 297/2004 on the capital market, published in the Official Gazette, Part I, no. 571/29.06.2004, as subsequently amended and completed, Law no. 126/2018 on the financial instruments markets, published in the Official Gazette, Part I, no. 521/26.06.2018, as amended, Law no. 24/2017 regarding issuers of financial instruments and market operations, published in the Official Gazette, Part I, no. 213/29.03.2017, the Regulation of the Financial Supervisory Authority no. 5/2018 on issuers of financial instruments and market operations, published in the Official Gazette, Part I, no. 478/11.06.2018 and so on.

[6] The Directives adopted at European Union level in the field of companies mostly concern the company by shares, taking into account the implications of its size, as well as the accentuated formalism that characterizes its setting up and functioning. Equally, the legal regulation applicable to companies by shares has also been coordinated through the European Directives adopted in the field of financial instruments and capital markets.

European Company (SE)[7], which takes the legal form of company by shares[8]. The practical application of the European regulation in this matter had revealed a number of difficulties, mainly caused by the frequent references to national laws, because the national provisions become applicable in the absence of a specific regulation contained in the European act[9]. Due to this reason, at European Union level, it was and still is considered its amendment.

Historically, the existence of this legal form of company has been recognized since the 17th -18th centuries, being considered to have appeared together with the significant concentration of capital and the creation of large-scale companies in the fields of banking, mining, shipping and so on. As emphasized in the French juridical literature[10], because the companies by shares were of significant size and concentrated significant funds, at the time of the French Revolution they were subject to a legislative authorization and even forbidden for a few years. Equally, at the beginning of the 19th century, the French Commercial Code of 1807 imposed a governmental authorization, issued by a decree of the State Council, for the setting up of companies by shares, which significantly reduced their number during that period. Similar requirements had also been provided by the legislation of other states during the period under review, and the possibility of the free setting up of this legal form of company had been legally recognized in most European states towards the end of the 19th century[11]. The French regulation on companies by shares, contained in the Law of July 24, 1867, which had liberalized to a significant extent the setting up and functioning of this legal form of company, had served as a model for the legislations of other European countries, such as the Italian Commercial Code of 1882, through which it was also introduced in the Romanian Commercial Code of 1887.

2. The specific juridical nature of the company by shares

The choice of a particular legal form of company belongs to the associates, depending on a number of criteria referring to the nature of the business, the available resources, the number of associates etc. However, according to the law,

[7] The European Company is the result of the adoption of the Council Regulation (EC) no. 2157/2001 of 8 October 2001 on the Statute for a European company (SE), published in the Official Journal of the European Union L294/10.11.2001, as amended, which was completed, as far the information, the consultation and the participation of employees is concerned, by the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, published in the Official Journal of the European Union L294/10.11.2001.

[8] See A.M. Lupulescu, *Some particularities concerning the limited liability company*, in „Perspectives of Business Law" Journal, Volume 4, Issue 1, 2015, p. 68, 69.

[9] In such a situation, it becomes applicable the legislation on the company by shares from the state in which the European Company has its registered office or central administration.

[10] See for a detailed presentation G. Ripert, R. Roblot, *Traité de droit commercial*, tome 1 – volume 2, *Les sociétés commerciales*, LGDJ, Paris, 2002, p. 234-238.

[11] For example, in France by the Law of July 24, 1867, in Germany by a law of 1870, in Belgium in 1873 and so on.

the exercise of certain activities depends on the existence of a certain legal form of company, conceived as the guarantee of adequate protection of third parties, such as the company by shares in the field of banking[12], insurance etc. The legal form of the company chosen by the associates must be mentioned in the constitutive act (articles 7 and 8 of Law no. 31/1990 republished) and its setting up and functioning are to be exclusively regulated by the legal rules referring to this form.

From this perspective, the company by shares was conceived as a form of organizing large-scale activities that require and concentrate important funds, made available to the company by a large number of shareholders. These significant aspects, which have influenced the legal regulation applicable to it, characterized by excessive formalism, complicated and strict rules, with countless conditions imposed by the law in order to protect both third parties and minority shareholders, lead to the conclusion that this legal form of company is not appropriate for small activities with a reduced number of associates, because the advantages of choosing this form of company are not justified, as compared to the disadvantages it implies.

For these reasons, in many legislations of European states a distinction is made, from the perspective of the legal regulation, between different categories of companies by shares, according to their size and the extent of their activities, taking into account different criteria such as the number of associates, the level of the registered capital, the closed or open nature of the companies etc.

In this respect, for example, under French law the anonymous companies have a minimum registered capital of EUR 37,000 (article L224-2 of the French Commercial Code) and those whose shares are quoted on a regulated market can only be set up by a minimum number of 7 shareholders (article L225-1 of the French Commercial Code). Instead, the French law also provides an original corporate structure, the simplified company by shares, created in 1994, which had experienced wide utilization in France, particularly because the legal regulation applicable to this form of company emphasizes the contractual freedom of shareholders and the removal of legislative constraints that characterize especially the companies of capital and the anonymous company, including those concerning the scale of the activity organized in this form of company. Originally reserved for legal persons (companies) in order to facilitate the functioning of the groups of companies, since 1999 the simplified company by shares can also be set up by any natural person. Equally, the subsequent modifications to the legal regulation of the simplified company by shares continued in the same direction, meaning that the French legislator allowed the creation of unipersonal simplified companies by shares and the contribution in industry within this form of company and subsequently had eliminated the minimum amount of the registered capital imposed by law[13].

[12] According to article 287 par. 1 of Urgent Government Ordinance no. 99/2006 on credit institutions and capital adequacy, published in the Official Gazette, Part I, no. 1027/27.12.2006, with the subsequent amendments, the banks can only be set up in the legal form of company by shares.

[13] See A.M. Lupulescu, *op. cit.* (*Some particularities concerning the limited liability company*), p. 72, footnote 22. The simplified company by shares is regulated by the provisions of articles L227-1 -

The English law also makes a distinction between public and private companies in the sense that only public companies can appeal to the public for subscription of shares, this form of company being therefore appropriate to activities involving significant investments and a higher number of shareholders. For the reasons outlined above, under English law, the regulation applicable to public companies is much more rigorous and stricter, such as, for example the provision which imposes a minimum registered capital of 50,000 pounds[14].

In Romania, this diversity of regulation is not so obvious, although companies whose shares are quoted on the stock market are subject to stricter rules that are specific to the financial instruments market. Therefore, according to the provisions of Law no. 31/1990 republished, a company by shares may be set up according to the choice of the founders, to the extent that it fulfills the conditions imposed by the law, namely a minimum number of 2 shareholders and a minimum registered capital of 90,000 lei, irrespective of the dimension of the activity envisaged to be exercised within this form of company.

Nevertheless, data from the Trade Register show that in 2018 (until 30th of September), 79 companies by shares have been incorporated in Romania, out of a total of 101,381 companies, which represents a very low percentage, namely approximately 0.07%[15]. Consequently, there is a reluctance to choose this legal form of company, which is undoubtedly explained by the rigor and abundance of the rules governing its setting up and functioning. In addition, one of the most important advantages of the company by shares, namely the limited liability of the shareholders for the social obligations, within the limits of their contributions, is also applicable in the case of the limited liability company, which is much more flexible, since the setting up and the functioning of the limited liability company does not require entirely the formality and rigor that characterize the companies of capitals. We believe that this reluctance to use the legal form of company by shares is normal and, from this point of view, the legal regulation has achieved its purpose, because this company is conceived for large-scale activities, involving significant resources, in order to explain and justify the way in which is set up and functions, according to the law. This conclusion is also sustained by the fact that the company by shares is the only legal form of company that may be set up by public subscription.

Concerning the definition of the legal nature of the company by shares, it should be mentioned firstly that the Law no. 31/1990 republished does not however proposes a legal definition of the forms of company it regulates, but it provides only a distinction between these forms, taking into account the extent of liability of

art. L227-20 of the French Commercial Code. See, for more details, G. Ripert, R. Roblot, *op. cit.*, p. 700-705.

[14] The regulation applicable to companies in English law is mainly contained in the Company Act 2006. See, for more details on this regulation and the distinction mentioned above, J. Dine, *Company Law*, fourth edition, Palgrave, Basingstoke, 2001, p. 10-13.

[15] Moreover, the incorporations of companies by shares have remained relatively constant compared to the similar period of 2017, when 104 companies by shares were registered in the whole country, out of a total of 112,180 companies, meaning about 0.09%.

the associates for the obligations of the company. As a consequence, within the meaning of the provisions of Law no. 31/1990 republished[16], the company by shares is that juridical form of company having legal personality, with the registered capital divided into shares, set up by two or more shareholders who are liable for the social obligations only within the limits of their contributions to its creation. Therefore, according to the criterion used for distinguishing the juridical forms of company having legal personality provided by the Law no. 31/1990 republished, respectively the extent of liability of the associates for the obligations of the company, the company by shares is characterized by the limitation of the liability of all shareholders to the value of the contributions.

This characteristic, namely the limited liability of the associates, is however common to the limited liability company and therefore this legal criterion is not sufficient to outline the specific legal nature of the company by shares. As a consequence, in order to define this legal form of company, another element should be added, namely the fact that the company by shares has its registered capital divided into shares, negotiable instruments which may be transmitted freely, under the conditions of the law.

Therefore, due to the negotiable nature of the shares, the quality of shareholder derives from, and is more related to, the title of owner of shares, dissociating itself from that of signatory of the company's constitutive act, who is bound, among other obligations, to contribute to its registered capital, the latter quality being relevant only at the setting up of the company. Actually, during the existence of the company, the quality of owner of the shares, and hence the title of shareholder, can change significantly and constantly, depending on the operations performed with these instruments, determining corresponding changes in the shareholder structure of the company. For these reasons, in the French legislation, the company by shares has the denomination of anonymous company, because its existence and functioning are not related to a certain shareholder structure, especially since the person of the shareholder can change at a very high frequency, especially in the case of the companies quoted on the stock exchange[17].

In this respect, we emphasize that, in the field of companies, as a principle, the Romanian legislator grants great importance to the contractual approach in order to define the juridical nature of the company in general[18]. Otherwise, concerning the company by shares as well, according to article 5 paragraph 1 of

[16] Especially article 3 paragraphs 1 and 3, but also article 91 from the Law no. 31/1990 republished, as amended and completed.

[17] Under French law, the anonymous company - the correspondent of the company by shares in our legislation -, the simplified company by shares and the limited partnership by shares are considered companies by shares, having the registered capital divided into shares. Furthermore, the distinction between the three forms of company by shares is based on the extent of the liability of the shareholders for social obligations, with the particularization of the rules applicable to the anonymous company for the configuration of the legal framework applicable to the simplified company by shares - see Art. L224-1 - L227-20 of the French Commercial Code.

[18] See, for more details, A.M. Lupulescu, *op. cit. (Some particularities concerning the limited liability company*), pp. 68-73.

Law no. 31/1990 republished, it is set up through the company contract and the statute, becoming a legal person from the date of its registration in the Register of Trade. Equally, we should mention the provisions of art. 1881 par. 1 of the Civil Code which provide, in general, „Through the company contract two or more persons mutually undertake to cooperate in the performance of an activity and to participate in it through contributions in money, in kind, in particular knowledge or activities, in order to share the profit or to use the economy that might result".

However, in the case of the company by shares, unlike all the other companies having legal personality, the institutional approach is of greater relevance and prevails over the contractual theory in defining the specific legal nature of this form of company.

Thus, since the most important element for the setting up of a company by shares is the material element, for the purpose of concentrating significant funds, the number of shareholders is, in principle, high and they do not know each other. For these reasons, when setting up a company by shares, the role of the founders is essential, because the initiative of accumulating funds and creating the company in this way belongs to them[19].

Moreover, in the case of the setting up of a company by shares by public subscription, by way of derogation from the general theory of the contract, although a company contract is concluded, it can even be formed in the absence of unanimous agreement between the parties - shareholders, namely accepting subscribers. In this respect, art. 28 letter d of Law no. 31/1990 republished enumerates, among the powers of the Constituent Assembly, the power to discuss and approve the constitutive act of the company. In connection with the Constituent Assembly of subscribers, art. 25 par. 1 of the Law no. 31/1990 republished expressly states that each subscriber is entitled to a vote, irrespective of the number of shares subscribed, precisely to emphasize their participation in the assembly as parties to the constitutive act, and to a lesser degree according to the fraction of the registered capital which they have subscribed. However, according to article 25 par. 4 of Law no. 31/1990 republished, the constitutive act of the company is adopted with the simple majority of those present within the Assembly, with the mention that its deliberations are valid if half plus one of the subscribers are present.

Equally, the functioning of the company by shares goes beyond the contractual approach of the company, because it basically relies on imposing the will of a majority for the benefit of the company and to the detriment of individual positions, and in no case on the unanimity that must characterize the contractual relations. Moreover, as stated above, the quality of shareholder is acquired and lost in close connection with that of owner of the shares, which are negotiable, and without the intervention of the will of the other shareholders. Actually within the company, the shareholders are not bound by the relations deriving from the

[19] According to article 6 par. 1 of the Law no. 31/1990 republished, the founders are the parties to the constitutive act, but also the persons who play a decisive role in the formation of the company, a hypothesis which is particularly applicable in the case of companies by shares.

company contract, because this contract can change without the intervention of their will, and even against this will[20].

In this respect, the intervention of the legislator to impose rigorous and strict rules was absolutely necessary, in order to protect third parties who contract with the company, but also to avoid abuses, even though they come from a majority. Thus, for example, the requirement of a minimum level of the registered capital having a high value is essential to ensure third parties on the seriousness of the obligations assumed by the company, taking into account that the liability of shareholders for these obligations is limited to the value of the contributions. At the same time, the shareholders who, in a particular matter, have a different opinion from that imposed by the majority have the possibility either to request the annulment of this majority's decision, if it is contrary to the law or the constitutive act, or to opt for the withdrawal from the company, under certain conditions provided by the law. Equally, in the spirit of the same concern, the legislator has conceived, in relation to the company by shares, a very strict organization, with well-defined bodies and a very rigorous control of the functioning of these bodies and the activity of the company.

Consequently, although in principle we consider, together with other authors[21], that companies, and especially those with legal personality, have a dual juridical nature, both contractual and institutional, in the case of the company by shares the institutional part is predominant.

3. Some specific aspects concerning the functioning of the company by shares – the General Meeting of shareholders

As already pointed out, the specificity of the legal nature of the company by shares, as well as certain imperatives of protection in relation to third party and even shareholders have led the legislator to construct a rigorous organization of this form of company, involving the existence of very well-defined bodies having powers of decision, management and control over the operation of the company.

In this sense, the General Meeting of shareholders is the supreme decision-making body of the company, composed by all its shareholders. Within the General Meeting, there is proportionality between the number of votes and the fraction of the registered capital represented by each of the shareholders. Thus, according to the law, each paid share gives the right to a vote in the general meeting, and the shareholders exercise the right to vote in proportion to the number of shares they own (articles 101 and 120 of Law no. 31/1990 republished). This rule derives from the specificity of the company by shares in which the material element prevails,

[20] In this respect, art. 132 par. 1 of the Law no. 31/1990 republished states that "The resolutions adopted by the General Meeting within the limits of the law or the constitutive act are mandatory even for the shareholders who did not take part in the meeting or voted against the decision".

[21] See in this respect M. Șcheaua, *Legea societăţilor comerciale nr. 31/1990 comentată şi adnotată*, 2nd edition, Rosetti Publishing House, Bucharest, 2002, p. 17. For a different approach, according to which the company has a contractual nature, see, for instance, St. D. Cărpenaru, *Tratat de drept comercial român,* Universul Juridic Publishing House, Bucharest, 2009, p. 173.

and thus the contribution of each shareholder to the registered capital of the company, and the obvious consequence is that the decisions within the company are the result of the will of those who represent the majority of the registered capital, irrespective of their number. Moreover, as emphasized above, the company by shares is much more than a contract and its functioning goes far beyond the rules applicable in relation to contracts. However, according to article 101 par. 2 of the Law no. 31/1990 republished, the constitutive act may provide the limitation of the number of votes of the shareholders holding more than one share, a possibility which concerns the protection of the minority shareholders against those who hold significant fractions of the registered capital, under the condition – which is not provided by the law - that this limitation applies equally to all shareholders[22].

The organization and functioning of the General Meetings in the case of the company by shares are precisely regulated by the law, with the additions or derogations that may be made, in certain cases, by the clauses of the constitutive act. Moreover, in this legal form of company, the legislator expressly introduces the distinction between ordinary and extraordinary meetings[23], according to the nature of the issues subject to the deliberation of the shareholders within them, namely matters concerning in principle the current functioning of the company, in case of ordinary General Meetings, and the amendment of the constitutive act, in case of extraordinary General Meetings. Concerning this division of powers between the two categories of General Meeting, we consider, together with other authors[24], that the provisions of the law in this respect are imperative, so that the constitutive act cannot introduce matters regarding its amendment in the competence of the ordinary General Meeting. This conclusion is reached taking into account the fact that the law provides different quorum and majority conditions for each category of General Meeting, and those referring to the extraordinary General Meeting are stricter. Moreover, the constitutive act may modify these quorum and majority requirements, which are specific to each category of General Meeting, but only in the sense of increasing the conditions imposed by the law, namely in order to set up a stricter decision-making process (article 112 paragraph 1 and article 115 paragraph 3 of Law no. 31/1990 republished).

The manner of regulating the decision-making body of the company by shares, namely the General Meeting of shareholders, expresses the specificity of this form of company, since the decisions concerning the company are not subject to the rules deriving from the contractual relationship that underlies its formation, and especially the unanimity. Thus, unanimity would have been impossible to attain, especially if the company by shares has a significant number of

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[22] M. Șcheaua, *op. cit.*, p. 142.

[23] In the case of the limited liability company, the legislator does not expressly introduce this distinction, providing only different quorum and majority conditions depending on the nature of the decisions to be taken within the General Meeting - art. 192 par. 1 and 2 of Law no. 31/1990 republished.

[24] M. Șcheaua, *op. cit.*, p. 156.

shareholders, as normally it is the case. Therefore, decision-making in General Meetings is dominated by the majority rule, and the decisions taken by the majority are likely both to bind the company and to be imposed upon those who have opposed their adoption.

However, in order to counteract the dangers that the abuse of majority might entail, the legislator has provided a number of possibilities for the benefit of shareholders who either did not participate in deliberations of the General Meeting that adopted a particular resolution or voted against that decision. In this respect, according to article 132 par. 2 of the Law no. 31/1990 republished, the shareholders who did not take part in the General Meeting or voted against the decision may bring an action for the annulment of the resolution adopted by the General Meeting, insofar as this is contrary to the legal provisions or the statutory clauses.

Thus, article 132 of the Law no. 31/1990 republished regulates the action for annulment or in nullity against the resolutions adopted by the General Meeting of shareholders, either in the cases when these resolutions are contrary to the imperative provisions of the law or in the situations when, even though they were formally adopted in compliance with the law, they are contrary to the interest of the company or certain categories of shareholders, as it results from the clauses of the constitutive act or even from the law[25]. Consequently, the above mentioned text distinguishes between the absolute nullity and the relative nullity of the resolution, depending on the grounds of nullity invoked by the plaintiff, in relation to which the conditions for the exercise of the legal action are different. This was also the reasoning of the High Court of Cassation and Justice in a particular case[26]. Thus, in the case of relative nullity, the active procedural quality belongs only to the shareholders who did not take part in the General Meeting or voted against the decision and asked for their position to be recorded, and the action may be filed within 15 days from the publication of the resolution in the Official Gazette of Romania, part IV. On the other hand, in the case of absolute nullity, the action may be brought by any person who can justify an interest, meaning both persons who do not have the quality of shareholders and shareholders. In the case of shareholders, it is also necessary to verify the conditions imposed by par. 2 of article 132 of the Law no. 31/1990, concerning the position expressed within the General Meeting at the time of the decision[27]. The right to the action in absolute nullity is non prescriptive.

[25] This is also the reasoning of the jurisprudence - see, for example, Dolj Tribunal, decision no. 48/07.02.2014, published on www.portal.just.ro under the "Jurisprudence" section.

[26] High Court of Cassation and Justice, Civil Section II, Decision no. 3241/8.12.2009, published on the site of the High Court of Cassation and Justice of Romania www.scj.ro under the "Jurisprudence" section.

[27] The shareholders who had voted for the decision cannot justify a legitimate interest in seeking a declaration that the same decision is invalid and, moreover, they would plead their own fault, which cannot be upheld - the High Court of Cassation and Justice, Civil Section II, Decision no. 3915/13.11.2013, published on the site of the High Court of Cassation and Justice of Romania www.scj.ro under the "Jurisprudence" section.

Equally, along with the action for annulment or in nullity of the resolutions of the General Meeting, which therefore concerns the hypothesis of unlawful decisions, the law also provides in the benefit of the shareholders the possibility of withdrawing from the company, if a decision adopted in the General Meeting, although legal, addresses significant elements of the existence of company and damages their individual interests. Thus, article 134 of the Law no. 31/1990 republished provides the right of the shareholder to withdraw from the company, insofar as two conditions are met cumulatively, meaning he has voted against the decision of the General Meeting and the object of this decision is the change of the main object of activity, the relocation of the headquarters abroad, the change of the legal form of the company, and its merger or split up. Being provided by an exceptional provision, derogating from the negotiable and freely transferable nature of the shares, the withdrawal of the shareholder from the company, with the consequence of the purchase of its shares by the company, can take place only within the term and under the conditions provided by article 134 of the Law no. 31/1990 republished[28].

4. Conclusions

As we have already emphasized, the present approach does not propose an exhaustive analysis of the legal regulation applicable to the company by shares, but it only highlights some significant aspects and particular rules which define its legal nature. The utility of this approach is justified not only by theoretical elements, but also by the fact that the companies by shares concentrate significant funds, this form of company being appropriate and applicable, in principle, to large-scale activities. It is precisely for these reasons that the legal regulation applicable to the company by share is very formal and strict, the existence of numerous and rigorous rules provided by the law representing a guarantee for the protection of the interests of third parties, shareholders and the company itself.

To the extent that the size of the company's activity does not justify the choice of this legal form of company, and the activity being carried out is not one of those for which the legal form of company by shares is imposed by law, it is normal that the option of the persons involved in the setting up of the company goes to the limited liability company because, similar to the companies of capitals, within this form of company the liability of the associates is also limited to the value of the contributions, advantage which coexists with a minimum limit of the registered capital of a very low value, namely 200 lei.

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