TRANSFORMATION OF COMPANIES FROM THE PERSPECTIVE OF LAW NO. 31/1990

Amelia Raluca BUŞCĂ*

Abstract

The legal consequences associated with amendments of a memorandum of association are influenced both by the intended purpose of the shareholders and by the practical type of amendment, whether it is in the form of changes of the share capital, mergers and acquisitions, dividing a company, change of registered office, change in the form of a company, extension of the company or others.

The paper proposes an approach to the effects of such changes underlining the general principles with a special focus on the uniqueness of the legal personality of a company maintained even after such alliteration as change in the form of a company occurs.

The research has illustrated the importance of the subject matter to Company Law, seen as a determinant element of a company's legal status through which this specific entity brings about the necessary flexibility vital to its existence and survival.

Keywords: *Company Law, memorandum of association, amendments of a memorandum of association, legal consequences, change in the form of a company.*

Introduction

It is common for companies to be forced, during operation, to adapt to economic and social circumstances, manifested in a society in constant expansion and globalization.

From a general perspective, these developments are due, primarily, to economic globalization, to irreversible trend of interdependence of world economies as a result of augmentation rate of international trade, of international capital flows or fulminant development of science and technology.

To align the needs and interests of individual associations with economic circumstances in which they occur, the associates may resort to adapt the company through the institution of changing its components.

Changing the company is achieved by modifying its articles of association. Thus, the legislator called Title IV of Law no. 31/1990 - "Amend the Articoles of Incorporation".

Wisely, was proposed the doctrine[1] as this title to bear the name "Change of the company", as amendments to the articles of incorporation is only a means by which is performed the change of the company itself. The establishment, operation, modification, dissolution and liquidation of the company are the legal consequences produced by consistent manifestations of wills of members and referring to the legal status of the company itself[2].

1. General principles of changing articles of incorporation

Amendment of Articles of Incorporation is performed under paragraph (1) of article 204 of Law no. 31/1990, by decision of the General Meeting or of the Board of Directors, or Executive Board, adopted pursuant to article 114, paragraph (1), or by decision of the court, pursuant to article 223 paragraph (3) and article 226 paragraph (2) of the Act.

The scope of changing the company, achieved by amending articles of incorporation, as reflected in Title IV of Law no. 31/1990, is represented by the change of legal form of the company [referred to in article 205 and article 204 paragraph (2) letter b)], extention of the duration of the company (art. 205) and the reduction or increase in share capital (Chapter II articles 207-221).

In addition to this, article 113 of the Act refers to moving the headquarters, changing the scope of activity, establishment or dissolution of secondary offices: branches, agencies, offices or other units without legal personality, merger with other companies or division of the company, as well as the anticipated dissolution of the company.

From the economy of the legal provisions mentioned above, results unequivocally the declarative nature of cases of changing the companies, so that doctrine and judicial practice included in this category: withdrawal of a partner, assignment of shares, completing articles of incorporation with new clauses on the issue of bonds, possibility to continue the company with the heirs of an associate, continue the

* PhD Candidate, Faculty of Law, "Nicolae Titulescu" University of Bucharest (e-mail: **amelia.busca@gmail.com**).

[1] Stanciu D. Cărpenaru, *Tratat de drept comercial român. Conform noului Cod civil*, Ed. Universul Juridic [*Treaty of Romanian Commercial Law. Under the new Civil Code*], Universul Juridic, Bucharest, 2012, p. 231-232.

[2] Amelia - Raluca Bușcă, „Analiza condițiilor generale pentru modificarea societății în reglementarea Legii nr. 31/1990", ["Analysis of the general conditions for changing the company in regulating Law no. 31/1990"], in *Curierul Judiciar* no. 9/2014, p.494-502.

limited liability company with a single associate following the withdrawal, exclusion or death of other / other associates[3] and revocation of the administrator appointed by the Articles of Incorporation[4].

Will of associates/shareholders to amend the articles of association can often materialize on several levels, meaning that the decision to amend the articles of incorporation may look more elements of the company. Thus, the share capital may be increased and changed the company's legal form, may exercise the right of withdrawal of an associate while reducing the share capital by an amount equal to social part due to the withdrawing associate, may exercise the right of squeeze-out while delisting the company[5] etc.

The effects of modifying the articles of incorporation are different depending on the purpose of the associated by this operation, as well as the practical case of change. Thus, the possible consequences of change are: increase or reduction of share capital, extension of duration of life, changing the form of the company, company relocation, merger, division of the company etc.

Legal personality of the company is unique, and article 205 of Law no. 31/1990 states that amendments to the articles of association, exempli gratia, changing the form of the company, extension of its duration, do not cause the creation of a legal entity.

A corollary of this allegation is that are not affected the rights and obligations existing in the assets of the company at the time of its amendment.

In the following, we will refer to the effects of the change printed by the specific of one of the amendments to the articles of incorporation to which article 205 of Law no. 31/1990[6] reffers.

2. Transformation of the company

Notions

Because the company form produces multiple and significant effect on the company, which in its essence is amended in the doctrine[7], was decided to use the term "transformation of the company" to refer to the case of amending the articles of incorporation[8].

Legal form of the company draws its own legal regime regarding the establishment, organization, operation and termination of the company, influencing the conditions of the financial liability of associates, share capital, initial minimum contribution and minimum capital, the tax regime of the company etc.

The will of the associates in the sense of changing the company's form may be due to the evolution of the interests of associates during its lifetime, which have the possibility to choose from the five types of company allowed by law, general partnership, limited partnership, joint stock company, limited company by shares and limited liability company, the one that is able to best meet these interests.

By the form of the company, is understood exclusively one of the forms mentioned above and provided by article 2 of the law. Thus, the transformation of a limited liability company into a limited liability company with unique associate in not considered, as the latter does not have a separate regulation as a particular form of company[9]. However, trading the company on a regulated market or in an alternative trading system does not transform the company, this having essentially the same basic

[3] St. D. Cărpenaru, op. cit., p. 232; I. Turcu, *Teoria și practica dreptului comercial*, [*Theory and practice of commercial law*], Editura Lumina Lex 1998, vol. I, p. 360.

[4] See Supreme Court, Commercial Division, Decision no. 1990/2002, in *Revista română de drept al afacerilor* [*Romanian Journal of Business Law*], no. 2/2003, p. 118. Conversely, the Court of Appeal Timișoara, Commercial Division, Civil Decision no. 128 of June 22nd 2010, unpublished, by showing that "the appointment and removal of directors, whether they are appointed by the articles of incorporation or by decision of the general meeting of shareholders, does not respresent an amendment to the articles of association of a company".

[5] In Continental Europe, most companies who withdraw from a regulated market resort to this mixed type of amending the articles of incorporation, called buyout offer with squeeze-out, with the acronym BOSO. To describe this mechanism as well as a comprehensive study on the causes of its use, see Isabelle Martinez, Stéphanie Serve, "The Delisting Decision: The Case of Buyout offer with Squeeze-out (BOSO)", in *International Review of Law & Economics*, December 2011, vol. no. 31, no. 4, p. 228-239.

[6] For the effects of the company life prolongation, see Amelia - Raluca Bușcă, „Efetele modificării societății conform Legii nr. 31/1990", ["Effects of changing the company according to Law no. 31/1990"] in *Curierul Judiciar* no. 10/2014, p.565-570.

[7] C. George, Drept Comercial Român [*Romanian Commercial Law*], op. cit., pp. 492-493.

[8] French law adopted the same term of transformation of the company. See Association Henri CAPITAN, *Vocabulaire juridique*, Gérard Cornu, editor, QUADRIGE / PUF Publisher, Paris, 2008, p. 930. It defines the transformation of a company as changing the form of a company, for example, transformation of a limited liability company ("SARL") into a joint-stock company ("société anonyme"), which does not entail the creation of a new legal person, but which is assimilated, sometimes, in tax matters, to a transfer of enterprises.

[9] See C. George, op. cit., p. 493.

characteristics as the previously held the listing on capital market[10].

Thus, this can be causes of the company transformation, the need for a capital which allows additional investment and / or an increased productivity, the imposition by the legislator of expensive technological acquisitions to improve the quality of a product, the need to increase export capacity, the need to increase the credibility of the company on the market of a product, anticipation of an augmentation of financial risk in a partnership or in general, domestic sau international economic or legislative changes.

Terms of achieving the transformation of the company

The transformation of the company is achieved in terms of article 204 of Law no. 31/1990[11], being necessary to be accomplished, in addition, the requirements for valid constitution of a company such as that chosen for transformation, such as the minimum number of associates, minimum capital, rules on statutory bodies and rules on the creation of corporate intent.

In principle, the choice of the form of the company is a reflection of the principle of freedom of contract, for the protection of public interests. The law provides exceptions to this rule, as the company is required to companies in the insurance sector, which can not exist except as limited companies, according to article 11, paragraph (1) of Law 32/2000 on insurance activity and insurances supervision[12] and banking, according to article 287 Government Emergency Ordinance no. 99/2006, banks, Romanian legal persons, and must be legally established as a joint-stock company[13] under commercial law[14].

3. Effects of achieving the transformation of the company

For the associates and because of their successors, changing the legal form of the company has effects from the moment of the decision to change. Pending the procedure for registration in the Trade Register and publication of the amendment, to third parties are not opposable specified change.

Continuity of legal personality of the company that changes its legal form is expressly provided for in article 205 of Law no. 31/1990[15].

The main reasons for the subsistence of the legal personality of the company subject to transformation are the coherence of the tax regime and legal effects on third parties.

In French law, which provides the same rule on continuing legal personality, it was shown that there is no transformation in the meaning of the word unless legal personality subsists. Otherwise, there would be the

[10] *Ibidem*. The author shows that many companies have found it necessary that the admission of the company to trading on a capital market to be reflected in the articles of incorporation, but the action is voluntary, subject to the general rules of statutory amendment, and not an expression of transforming the company.

[11] Under article 204 of the Law no. 31 / 1990 is not required the signature by all the associates of the act amended and of the updated articles of incorporation. In this matter, are not applicable the provisions of article 5 of Law no. 31/1990 included in Title II - Setting up companies, but the provisions of Title IV of Law 31/1990 entitled "Changing the articles of incorporation". Because these acts are the result of decisions of general meetings of shareholders, on the amended act and updated constitutive act is sufficient the signature of the persons referred to in paragraph 4 of article. 204 - Administrator or Board members. See C.A. Craiova, Commercial Division, Decision no. 556 / 6.04.2008, published on the internet at http://portal.just.ro/54/Lists/Jurisprudenta/DispForm.aspx?ID=513.

[12] See for development Vasile Nemeș, *Dreptul asigurărilor* [*Insurance Law*], Ed. Universul Juridic, Bucharest, 2010, and Vasile Nemeș, *Dreptul asigurărilor.Curs Universitar* [*Insurance Law.University Course*], Ed. Hamangiu, Bucharest, 2012, p. 36.

[13] For details on legal form needed to set up a bank and sanction of non-compliance with legal provisions on the legal form of banks, see Carmen Adriana Gheorghe, *Drept bancar* [*Banking Law*], 3rd edition, Ed. C.H. Beck, 2014, p. 104, 120-125.

[14] Stanciu D. Cărpenaru, *Tratat de drept comercial român. Conform noului Cod civil,* [*Treaty of Romanian Commercial Law. Under the new Civil Code*] op. cit., p. 141.

[15] Similar provisions are found in the legislation of many European countries. E.g., under Belgian law, until February 23rd 1967, the majority jurisprudence which the Court of Cassation confirmed several times, based on the principle of inviolability of essential elements of the company, was to the effect that the change in legal form by decision of the general meeting was prohibited, the adoption of such a decision led to the dissolution of the initial company, and establishing a different legal entity. By introducing a section VIII in the Uniform Laws on companies, by the Law on February 23rd 1967, was removed this dirimant obstacle in the way of transforming the company, granting that it continued the legal personality and not interrupted by such amendment to the articles of incorporation. See, in this regard, Claudine Weyne, editor, *Lexique sociétés Commerciales édition 2007,* Wolters Kluwer Belgium Publisher, Waterloo, 2007, p. 773 and Tilquin T. and V. Simonart, *Traité des sociétés*, vol. I, Kluwer Éditions Juridique Belgique Publisher, Diegem, 1996, p. 46.

dissolution of the company, followed by the creation of a new company[16].

Given that is preserved the legal personality, is understandable that the company keeps its identifying attributes such as headquarters, nationality and unique registration code.

Regarding the firm[17] of the company, is required it to be changed, lawfully provided for the form of the company chosen for transformation.

Thus, when the form of the company was changed into a general partnership, the firm of the company transformed must include the name of at least one associate with the words „general partnership" written as such. (Article 32 of Law no. 26/1990)

The transformation of the company into a limited partnership assumes that the new firm of the company to include the name of at least one of the general partners, with the words "limited partnership", written entirely. (Article 33 of Law no. 26/1990)

The law provides that if the name of a stranger person from the compant appears, with his consent, in the company of a general partnership or limited partnership, it becomes unlimited and severally liable for all obligations of the company. The same rule is applicable to the limited partner whose name appears in the limited partnership company. (Article 34 of Law no. 26/1990)

Regarding a joint-stock company or limited by shares, it consists of a personal name, likely to distinguish it from other companies, and will be accompanied by the words written entirely "joint-stock company" or "S.A." or, where appropriate, "limited company by shares". (Article 35 of Law no. 26/1990)

Finally, on a limited liability company, it includes a personal name, to which may be added the name of one or more partners, and will be accompanied by the words written entirely "Limited Liability Company" or "LLC" (article 36 of Law no. 26/1990)

Therefore, in all cases, changing the form of the company will attract the change of its firm, so that the associates will have to provide a specific clause on the company name[18].

After transformation, subsist without modification all contracts concluded earlier with third parties, such as lease contracts for headquarters, insurance contracts, loan contracts, leasing contracts etc.

It can not be supported that the transformation of the company would impose *per se* new obligations or would have any effect on the liability of shareholders, who are bound by the same social obligations as the existing in the moment of changing the form of the company[19].

However, we can conclude that the law does not impose obligations on creditors to preserve their rights to claim on the company. Of course, if the transformation of the company attracts new guarantees due to changes in its form, social creditors should be able to benefit from them. The solution is favorable to social creditors and is based on the fact that the associates have consented freely in changing the form of the company, thus taking all the negative effects that would attract such an amendment to the articles of association.

For example, we mention that if a limited liability company is transformed into a general partnership, creditors should be recognized, with the rights recognized to the initial form of the company, also the right to joint and several liability for social liabilities, according to article 3, paragraph (2) of Law no. 31/1990.

De lege ferenda, this solution should be integrated in article 3 of Law no. 31/1990, into a separate paragraph, as follows: "(4) If, prior to the amendment of the company, the associated who were liable for the social obligation only up to the competition of the subscribed capital became associates in the general partnership or limited associates in the limited partnership or in limited partnership by shares, paragraph (2) is applicable and social obligations incurred prior to such change, apart from the situation in which the creditor expressly consented in writing to change the company".

Please note that we have not considered it necessary to restrict the scope of applicability of the proposed text exclusively for the amendment of the company to change the legal form. On the contrary, as drafted, it could be applicable, for example, if is changed the articles of incorporation by becoming a general partner of a limited partner. We also appreciate useful to be made explicit renunciation of the social creditor to the guarantees of his claim, solution that can be removed otherwise the principle of mutual consent governing contracts. However, we considered it necessary to establish the written form ad validitatem, to prevent possible problems that would face the courts in reviewing the validity of the act of renunciation.

Also in regard to the effects of the transformation of the company, towards third parties, we mention that changing of the legal form of a limited partnership into a limited company or limited liability compant does not alter the terms of attracting liability towards the social creditors with titles previous transformation, they will respond unlimited and severally and not up to the subscribed capital.

Another proposal *de lege ferenda* with great practical utility is that article 3 of Law no. 31/1990 to include an additional paragraph as follows: "(5) Where, prior to the amendment of the compant, the associates who responded for the unlimited social obligations and

[16] Y. Guyon, *Droit des affaires, Tome 1, Droit commercial général et sociétés*, Economica Publisher, Paris, 1996, p. 593.

[17] Article 30 of Law no. 26/1990 on Trade Register, defines the company as its name, where applicable, the name under which a trader operates and under that signs.

[18] Law 31/1990 does not use the term firm, but the name. See article 7, letter b); article 8, letter b); article 81, article 19, article 56 etc.

[19] C.A. Ploiești, Commercial Division and the administrative and fiscal department, decision no. 394/1998, in the Commercial Law Review no. 6/1999, p. 136, quoted by St. D. Cărpenaru, Gh. Piperea, S. David; *Companies Law*. *Comment on articles*, 5th edition, 2014, op. cit., p. 717.

jointly became limited partners in the partnership or company limited by shares shareholders in the joint-stock company or associates with limited liability company, paragraph (2) is applicable and social obligations incurred prior to such change, apart from the situation in which the creditor expressly consented in writing to change the company".

The considerations which accompanied the proposal for the introduction of the paragraph (4) in the article 3 of Law no. 31/1990 shall remain valid with respect to this de lege ferenda proposal.

Clearly, from the date of legal transformation of the company, the legal status of the company follows the new form chosen by the associates, with all the consequences resulting from the law.

3. Aspects on transforming the company in other countries

Changing companies in United Kingdom

Under article 21 of the *Companies Act 2006*[20] - Companies Law in 2006, in the United Kingdom, the change of documents of incorporation (named "articles of incorporation"[21]) can be achieved after a decision at an extraordinary general meeting of associates[22].

Article 22 of the same law provides that the articles of association of a company may contain certain clauses, referred to as *provisions for entrenchment*, establishing that certain elements of the articles of incorporation may be amended or excluded only if certain conditions are met or only after carrying out certain procedures much more restrictive than those applicable to the changes referred to in article 21.

The terms set out in article 22 can be inserted into the constitutive act *ab initio* or may be introduced by a subsequent agreement on which all associates have manifested its willingness positively.

It is noteworthy that, according to article 22 paragraph (3) of the same law, the inclusion of some *provisions for entrenchment* does not prevent modification of the articles of incorporation by agreement of will of all associates or change of it judicially.

4.2. Changing the company in France

According to the French Commercial Code[23], amending articles of incorporation of some companies may have *inter alia* aimed at changing the company's name or form, increase or decrease of the share capital, registered office and duration of the company.

On the transformation of companies, it may be voluntary or statutory. The voluntary basis may have, for example, the motivation of associates to benefit from a favorable tax regime and the need to adapt the company structure applicable to a more complex form[24]. However, the law may require change of legal form of the company, as a requirement for the survival of the company. Thus, according to article 221-15 paragraph (7) of the Commercial Code, the death of a associate of general partnership, where the shares are transmitted to a minor heir, since can not be held the unlimited and joint liablily to such person, it is necessary to transform the company, within one year, *inter alia* in a limited partnership in which the minor to acquire only the quality of limited associate. Otherwise, the company will dissolve.

The consequences of maintaining moral personality of the company after the transformation, provided by article 210-6 of the Commercial Code were amply discussed in the doctrine[25].

In terms of the company, transforming effects are reduced; meaning that, in the absence of novation, the rights and obligations that the company has entered into the old legal form subsist[26].

Regarding the rights of the associates, from the date of conversion will come into the new social rights, which replace the earlier rights through real subrogation.

4.3. Changing the company in Belgium

Unless otherwise stated, the general meeting of associates has the power to amend articles of incorporation of joint-stock companies, of private

[20] Law can be found on the Internet at the following address: http://www.legislation.gov.uk/ukpga/2006/46

[21] Until the entry into force of the *Companies Act 2006* for the establishment of companies was necessary to draft two articles of incorporation, named *memorandum of association* and *articles of association*, *memorandum and articles* together. Since the entry into force, October 1st 2009, is no longer drawn *memorandum of association*, but companies established before that date, work based on the two aforementioned acts.

[22] The procedure for making such decisions is described in article 283 of the *Companies Act 2006*. In principle, it requires the consent of at least 75% of associates.

[23] It is found on the internet, as official, updated daily, at http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000005634379.

[24] See Philippe Merle, *Droit commercial. Societies Commerciales*, 7th Edition, Dalloz Publisher, Paris, 2000, p. 123.

[25] See Philippe Merle, *op. cit*, p. 125 and J. Fiscel, "L'absence d'être moral nouveau dans les transformations de société", *Gazette du Palais* 1986, II, p. 724.

[26] Y. Guyon, Note on March 4th 1969, Semaine Juridique - édition générale II, 15949, quoted by Philippe Merle, *op. cit*, p. 125.

limited companies[27] and cooperative companies with limited liability[28] under article 558 or 286 of the Companies Code[29].

In view of legal adoption of decisions, it is necessary that the proposed amendments to be expressly stated in the summons, the quorum shall be one half of the capital for the first convocation, for the next meeting is legally constituted regardlesss the quorum and the adoption of a decision to be made with a ¾ majority of the votes.

Belgian law provides different requirements for certain amendments to the articles of incorporation of the company.

Exempli gratia, to change the main object of the company is required prior report prepared by the management board or body, by detailing the situation of assets and liabilities of the company for a period ending no later than three months before the report to be attached to the act of summoning. The absence of this report draws annulment of general meeting[30].

Authentic form is mandatory for amending articles of incorporation of companies.

Subsistence of legal personality of the company after the change of legal form is provided in article 775 of the Companies Code. Proposal for the transformation of the company must be the subject of a report of the board of directors or management bodies, similar to that required for the change of the legal status of the company.

If the transformation of legal form of a limited company, of a limited partnership by shares or of a SPRL, the shares or social parts without vote right receive, after transformation, a vote right, regardless of any contrary provision in the articles of incorporation.

In the case of a general partnership transformation, of a limited partnership or a limited partnership by shares, joint associates and general associates bear unlimited joint and several liabilities towards third parties for previous social obligations.

Interestingly, in the case of transformation of a company into a general partnership, into limited partnership or limited partnership by shares, joint associates and general associates bear unlimited, but not jointly liability, to third parties for previous social obligations[31].

4.4. Changing the companies in Spain

On July 04th 2009, has intered into force the Law no. 3 / April 03rd 2009 on structuring changes of companies[32] with a wide content, detailed by 103 articles[33].

Regarding the objective scope, article 1 of this law states that structural changes of companies consist of transformation, merger, partition, global assignment of assets and liabilities, including international movement of headquarters. In this regard, paragraph (2) of the Act states that it is intended to regulate only those changes with "structural" character, i.e. changes affecting the property structure or of personnel of the company.

Subjective scope of the law is detailed in article 2, which states that it is applicable to all companies that have commercial character, or by their object, either by way of establishment.

Article 3 of the Act stipulates that following the transformation of the company by adopting a different legal form, it retains legal personality.

Regarding the effects on the liabilities of the associates for social obligations, article 21.1 provides that associates that assume personal and unlimited liability for social obligations are liable in the same way for previous debts of transformation.

Except where associates expressly consented to transformation, personal liability of members subsists, who were personally liable for contracted company's debts previous to transformation. Liability can be drawn no later than 5 years from the date of publication of transformation into "Trade Register Official Bulletin".

On the subjective side of this responsibility, in the doctrine was shown that it extends both on associations that remain in the company and on those who choose to withdraw from the company, as a result of transformation[34].

Regarding the subject of liability, the law refers to debts, but the doctrine concluded that this must look, in the case of successive performance contracts, only the

[27] Private limited company ("société privée à responsabilité limitée, with the acronym SPRL") consists of one or more persons responsible for social obligations only in the line of their contribution and whose rights of association are not transferable except under certain conditions.

[28] Limited liability cooperative company ("société coopérative à responsabilité limitée, with the acronym SCRL") differs from SPRL by the fact that it must have at least three partners, to a minimum of two to SPRL, and by way of functioning of it.

[29] Companies Code of May 7th 1999 published in the Official Journal of August 06th 1999 under the no. 1999A09646, p. 29440, can be found on the Internet at www.ejustice.just.fgov.be.

[30] For details, see R. Verhoeven, *La pratique des Sociétés*, vol. I, Kluwer Publisher, Waterloo, 2007, p. 163 et seq

[31] For further details on the companies transformation, see R. Verhoeven, *La pratique des sociétés*, vol. II, Kluwer Publisher, Waterloo, 2007, p. 729-733.

[32] Available on the internet at http://www.boe.es/buscar/act.php?id=BOE-A-2009-5614

[33] Since its adoption, the law was received with skepticism both in doctrine and in jurisprudence, considered a true "technical failure". Fernando Vives Ruiz, Arnau Tapias Monné, "Law of Structural Modifications. A standard technically failed in *InDret-Magazine for the Anaysis of Law for 4/2013*, Barcelona, pp. 3-49. Also, see Jesús Quijano Gonzalez, "Elaboration process of the Law for Structural Modifications of Companies" in Fernando Rodrigues Artigas, editor, *Structural Modifications of Companies*, T. I, Aranzadi, Pamplona, p. 25-38; GONZÁLEZ-MENESES and Segismundo ÁLVAREZ ROYO-VILLANOVA, *Structural Modifications of Companies*, Dykinson Publisher, Madrid, 2011 and José Mª Beneyto Pérez, Rita Largo Gil, publishers and Esther Hernández Sainz, coordinator, *Transfers of companies and structural modifications of companies*, Bosch Publisher, Barcelona, 2010.

[34] See Manuel Álvarez GONZÁLEZ-MENESES and Segismundo ÁLVAREZ ROYO-VILLANOVA, *Structural Modifications of Companies*, Dykinson Publisher, Madrid, 2011, p. 107.

obligations to pay, corresponding to benefits previous transformation[35].

Under the provision of article 21.1 of law, is established the possibility of relief of liability, if those creditors consent the transformation.

It should be noted that, as stated, the law contains an institution less used in European legislation, global assignment of assets and liabilities of a company.

Despite the controversy that has born the Law on structural modifications of companies, it is worth the effort to codify in detail of the Spanish legislator in a timely matter, with tendency so close to the multiple faces of the legal consequences caused by changes of the company under its scope.

Conclusions

Changing companies, achieved by modifying their articles of incorporation, as provided by law, appears as one of the most viable solutions and less intrusive, available to the signatories by law, of a corporate pact to meet the needs of expanding companies, competitive or economic.

Compared to the dissolution of the company and formation of a new legal entity that takes into account the interests of current associates, changing the compay is shown, most often, as being preferable, for understandable reasons.

Given the outstanding importance of the institution as discussed, the conclusion suggests itself that the need for the development of the company must be accompanied by a constant effort to rationalize the regulations on its amendment. Thus, it is reasonable the idea to support, in Romania, an extensive process of refining the legal framework in this area.

By de lege ferenda proposals made in this approach, was tried the legislative consecration of some conclusions expressed in this paper, after the consultation with the doctrine and jurisprudence on the matter, consequent to the idea of making a predictable legal framework and unambiguous.

Of course, perhaps the most appropriate recommendation would be that the legislator to devote the amendment of the compant with a wider chapter in which to take some legislative solutions that have already been applied successfully in the legislation of other countries with longer tradition in the field of commercial law codification.

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