General Features of the Limited Liability Company

Lecturer **Adriana DEAC**[1]

Abstract

In the sphere of professional traders legal entities, limited liability companies represent the type of trader most often encountered in international practice. What are the reasons that make the limited liability company so attractive in the Romanian legislation? What are the essential features of this type of company? This paper aims to provide answers to these questions using various methods of interpreting the legal provisions in force at this time. The study will analyze the main legal characteristics of the limited liability company, namely the low number of members, limited liability and reduced share capital.

Keywords: *professional trader, limited liability company, Law no 31/1990, Civil Code, Law no. 265/2022, associates, constitutive act, share capital, assets, social parts, liability, National Trade Register Office.*

JEL Classification: K22

1. Introduction

The limited liability company was regulated for the first time in German law in the 19th century, by adopting the *Gesellschaft mit beschankter Haftung* in 1892, a normative act published in the "Empire Law Sheet" – "*Reichgesetz blatt*"[2] and which remained in force even after the entry into force of the German Commercial Code in 1896.

Having as a source of inspiration the German model of *Gesellschaft mit beschankter Haftung*, the legal systems of other neighboring states such as Austria, through a law since 1906 regulated this new associative form. Poland and Czechoslovakia regulated the limited liability company in 1920[3].

The limited liability company was regulated in France by the Law of 07.03.1925, in Italy by the Code of 1942 and in Spain by a Law of 17.04.1953.

In interwar Romania, the limited liability company was regulated in Bukovina by applying Austrian legislation and after the Union of 1918, it represented the type of company preferred by traders.

In the German legal system, the legislator continued to innovate, regulating the limited liability company with a single partner by the Law of 13.05.1980 and the Law of 04.07.1980. Inspired by these regulations, France introduced, through Law number 85-697 of 11.07.1985 and through the Decree number 66-909 of 30.07.1986, this new type

[1] Adriana Deac - Faculty of Law, Bucharest University of Economic Studies, Romania, adriana.deac@drept.ase.ro.

[2] Sorana Popa, *Drept comercial. Teorie și practica judiciara (Commercial Law, Judicial Theory and Practice,)* Universul Juridic Publishing House, Bucharest, 2023, p. 176.

[3] Laurențiu Novac-Diaconu, „Noțiunea și trăsăturile societății cu răspundere limitată", *Acta Universitatis George Bacovia. Juridica,* Volume 4. Issue 2/2015, https://www.ugb.ro/Juridica/Issue8RO/13._Notiunea_si_trasaturile_societatii_cu_raspundere_limitata.Novac_Laurentiu.RO.pdf, accessed on 20 December 2025.

of company, called a sole proprietorship with limited liability[4].

In modern Romanian legislation, the limited liability company is regulated by Law no. 31/1990[5] on (formerly commercial) companies, amended and republished, a normative act that establishes the conditions under which legal subjects, natural and/or legal persons, may associate, pooling certain assets in order to carry out an economic activity with the aim of obtaining profit.

The paper will analyze this type of professional trader with regard to the procedure for establishing the company and in terms of general features, without addressing in detail the functioning and termination of this legal subject.

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In carrying out the study, I will also take into account European Union provision, namely the Twelfth Directive on company law, Directive 89/667CEE[6] and Directive 2009/102/CE[7] which repealed the previous Directive, 89/667CEE, as well as other national regulations in the commercial field that are relevant to the analysis of limited liability companies.

2. General features of the limited liability company

The limited liability company is the most common professional trader both in Romanian legislation and in the domestic legislation of other European Union states, as a method of application, due to the easier conditions that must be met for the establishment, operation and termination of this professional.

According to national legislation, the correct terminology is "professional trader legal person", given the regulation in art. 3 of the Civil Code which refers to the notion of "professional", in the sense of a legal subject who operates an enterprise, that is, carries out a systematic activity, by combining the factors of production, consisting in the production, administration or alienation of goods or the provision of services in order to achieve an economic[8] purpose.

The limited liability company is a *sui generis* company, both *intuitu personae* and *intuitu pecuniae*[9], which has borrowed the most advantageous legal features from

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[4] Adriana Deac, „The Limited Liability Company from the Perspective of the Latest Legislative Chenges in Romania", in Cristina Elena Popa Tache, Renata Treneska Deskoska, Nathaniel Boyd (Coordinating Editors), *Adapting to Change Business Law Insights from Today's International Legal Landscape*, ADJURIS – International Academic Publisher, Bucharest, Paris, Calgary, 2024, p. 32-42.

[5] Law no. 31 of 1990 on Companies, amended and republished, published in the Official Gazette of Romania, part I, no. 1066 of 2004.11.17, version in force on 06.12.2024.

[6] Directive 89/667EEC, Twelfth Council Company Law Directive of 21 December 1989 on single-member private limited liability companies, published in the Official Journal of the European Communities L 395, 30.12.1989.

[7] Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 on company law relating to single-member private limited liability companies, published in the Official Journal of the European Union L 258, 01/10/2009.

[8] Art. 3 Civil Code, Law no. 287/2009 on the amended Civil Code, published in the Official Gazette of Romania, Part I, no. 505 of 15 July 2011.

[9] Sebastian Bodu, *Legea societaților comentata*, Rosetti International Publishing House, Bucharest, 2023, p. 1033.

both partnerships (limited number of members, personal nature, as well as a low share capital, with no minimum threshold) and from capital companies (limited and individual liability).

The limited liability company is defined as that type of company established, based on full trust, by two or more persons, natural or legal who bring certain assets, in order to carry out a commercial activity (production, trade or service provision activities), in order to share the profit and, who are liable for social obligations within the limit of their contribution[10].

The limited liability company is the company whose social obligations are guaranteed by the social assets and the associates are liable only within the limit of the subscribed share capital[11].

The definitions given to the limited liability company in the specialized literature come to show two fundamental features of this type of company: limited liability of members, within the limit of the contribution to the establishment of the share capital[12] and the reduced share capital. Obviously, there are other legal characteristics that attract those who want to establish a company, but these are the two decisive arguments for the establishment of this type of professional.[13]

Starting from the definitions provided by the legal regulations and the specialized literature, we will analyze the main legal features of the limited liability company, namely, the limited number of partners, limited and individual liability and very low share capital.

Regarding the persons who can establish a limited liability company, art. 1 paragraph 1 in conjunction with art. 5 paragraph 2 of Law no. 31/1990 provides that "*in order to carry out profitable activities, natural persons and legal persons may associate and establish companies with legal personality. The limited liability company may also be established by the act of will of a single person*".

Therefore, both natural persons and legal persons may have the quality of partners, members of a limited liability company.

Regarding natural person associations, the law establishes two categories of persons who cannot be founders of a limited liability company: incapable persons and persons deprived of this right... "*persons who are incapacitated or who have been prohibited by a final court decision from exercising the right to exercise the capacity of founder as a complementary punishment to the conviction for crimes against property through breach of trust, corruption crimes, embezzlement, crimes of forgery in documents, tax evasion, crimes provided for by Law no. 129/2019 for the prevention and combating of money laundering and the financing of terrorism or for the crimes provided for by this law*".

According to the Romanian Civil Code, persons lacking the capacity to exercise are incapacitated, the concrete ability of a natural person to acquire rights and assume obligations in a concrete manner by concluding legal acts.

Full capacity to exercise is acquired from the moment the natural person

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[10] Stanciu D. Cărpenaru, *Tratat de drept comercial român*, Universul Juridic Publishing House, Bucharest, 2016, p. 373.

[11] Vasile Nemeş, *Drept comercial*, 5th edition, Hamangiu Publishing House, Bucharest, 2023, p. 286.

[12] Smaranda Angheni, *Drept comercial*, 2nd edition, Universul Juridic Publishing House, Bucharest, 2023, p. 180.

[13] Adriana Deac, *op. cit,* p. 33.

becomes of age, by reaching the age of 18. As exceptions to this principle, a minor who has reached the age of 16 and has entered into a valid marriage, acquires full capacity to exercise; likewise, the guardianship court may recognize in advance the full capacity to exercise of a minor who has reached the age of 16, after hearing the minor, the parents or guardian and, possibly, obtaining the opinion of the family council.

Those who benefit from the measure of special guardianship, meaning those adults who cannot take care of their own interests due to a permanent and total deterioration of their mental faculties, established following a medical and psychosocial assessment, and who need continuous support in the formation or expression of their will, do not have full capacity to exercise and, as a consequence, cannot be founders of a limited liability company.

Regarding the natural persons under guardianship, a temporary legal institution for the protection of the interests of capable adults who, due to age, illness or physical infirmity, cannot personally administer their assets or defend their interests properly, having full legal capacity, they may validly conclude the articles of association of the limited liability company.

Regarding the issue of incapacitated persons, Law no. 31/1990 clearly states that "*they cannot be founders*". Consequently, we can appreciate that these persons may acquire the status of associates, not founders, by succession or through legal acts between the living, provided that their legal representative has given prior consent.

The second category of individuals who cannot be founders of a limited liability company are the disqualified individuals, those who have been prohibited by a final court decision from exercising the right to be a founder as a complementary punishment to the conviction for committing certain crimes. These are economic crimes, against property. It is worth noting the "*specialization*" of the scope of these crimes depending on the field regulated by the normative act. Companies Law no. 31/1990 being a normative act in the economic field, obviously, the crimes whose commission attracts this special incapacity are crimes such as embezzlement, fraudulent management, tax evasion, money laundering, fraud, corruption crimes and the crimes provided for by the Companies Law.

Legal entities may also have the capacity of partners of a limited liability company. Art. 206 of the Civil Code provides that "*a legal entity may have any civil rights and obligations, except those which, by their nature or according to the law, can only belong to a natural person. Non-profit legal entities may only have those civil rights and obligations which are necessary for the achievement of the purpose established by law, the deed of incorporation or articles of association*". Therefore, as long as the acquisition of the capacity of partner in a limited liability company can serve the achievement of the object of activity of the legal entity, it may, through its legal representative, the administrator, conclude the deed of incorporation.

A final clarification must be made regarding the number of members of a limited liability company. According to art. 4 in conjunction with art. 12 of Law no. 31/1990, in a limited liability company, the number of partners cannot be less than 2 and cannot be higher than 50.

As a general rule, any legal entity can be established by the association of at least two legal entities, this rule also applying to the case of a limited liability company. However, Law no. 31/1990 regulates, through art. 5 paragraph 2, a new form of company, starting from the limited liability company, namely, a single-member limited

liability company or a sole shareholder company which implies that a single legal entity, without associating with anyone else, can establish a legal entity, a professional trader. Beyond the terminological contradiction between "associate" (which implies the existence of at least two legal entities that associate) and "sole" (meaning a single legal entity) and without going into details at this point, we can say that this is one of the few exceptions regulated in Romanian legislation when a collective legal entity can be established by a single natural person or legal entity.

In relation to the maximum number of members, namely 50, Law no. 31/1990 imposed this limit in the application of the *intuitu personae* character of this type of company. We consider this regulation justified, a limited liability company with a larger number of members exceeding the purpose of its establishment. In this case, the associative forms of capital companies are the recommended ones. The provision of art. 12 regarding the maximum number of members, although there is no express provision in this regard, also applies to partnerships, general partnerships and limited partnerships, considering the same *intuitu personae* character.

Regarding the second essential feature of the limited liability company, namely the liability of members for the company's debts, art. 3 paragraph 3 of Law no. 31/1990 provides that the partners in the limited liability company are liable only up to the amount of their contribution to the formation of the subscribed share capital. This is the only corporate form in Romanian legislation that has its name expressly specifying the form of liability that the associated members have for the debts of that company.

As a legal person, a subject of law distinct from its partners, the limited liability company has its own liability for the company's debts, which does not extend to the members. They are responsible, that is, they assume the obligation to pay, to pay in the sense of *solutio,* the contribution they have subscribed and which they may lose in the event of failure of the company's enterprise[14].

This feature of the company has favored the successful application in practice of this type of company. The main legal problem, regardless of the nature of the legal act concluded, is that of liability. And a limited liability that guarantees the partner that, in the event of failure of the company, he will lose only what he has invested, constitutes the great advantage of this associative form. Therefore, each partner of the limited liability company will be liable only for the percentage share of profits and losses that is due to him according to his contribution to the formation of the share capital, a share that cannot exceed the value of the partner's contribution to the establishment of the company.

With reference to the third essential feature of the limited liability company, namely the minimum share capital, its divisions, as well as the types of contributions of the associates allowed to form the share capital, through the successive amendments made to the text of Law no. 31/1990, the legal provision contained in art. 11, art. 9^1(2) and art. 16 para. 1-3 is the following: "*the share capital of a limited liability company is divided into equal shares. The shares cannot be represented by negotiable securities". "Cash contributions are mandatory when establishing any form of company. Contributions in kind must be economically evaluable. They are admitted to all forms of company and are paid by transferring the corresponding rights and by effectively handing over to the company the goods in a usable state. Contributions in debts have*

[14] Gheorghe Piperea, Sorin David (coord.) *Legea societăţilor. Comentariu pe articole*, 6th edn., C.H.Beck Publishing House, Bucharest, 2023, p. 55.

the legal status of contributions in kind, not being admitted to ..... limited liability companies". The limited liability company must pay 30% of the value of the subscribed share capital no later than 3 months from the date of registration, but before starting operations in the name of the company, and the difference in the subscribed share capital will be paid: for the contribution in cash, within 12 months from the date of registration; for the contribution in kind, within a maximum of 2 years from the date of registration[15].

As a defining element of any legal entity, art. 187 of the Civil Code refers to "*own assets, allocated to the achievement of a certain lawful and moral purpose, in accordance with the general interest*"

We believe that some clarifications are required regarding the notions of patrimony and share capital to which the specific legislation refers, as these are different legal institutions, but very similar at the same time.

From a legal point of view, according to the Civil Code, the patrimony represents the totality of rights and obligations evaluable in money, with economic value belonging to the legal subject, being made up of the patrimonial asset (the totality of rights evaluable in money) and the patrimonial liability (the totality of obligations evaluable in money). The patrimonial asset is also known as "*social asset*" and is made up, specifically, of the assets contributed to the establishment of the company and those acquired in the course of the company's activity. The patrimonial liability or "*social liability*" is specifically formed by the patrimonial obligations assumed by the limited liability company as a result of carrying out its activity, through legal acts concluded by its legal representative, the administrator.

The concept of share capital has a double meaning, accounting and legal. From an accounting point of view, share capital does not have a real existence, but rather represents a figure agreed upon by the partners. In the company's balance sheet, share capital is highlighted as a liability, as an obligation of the company towards the partners who contributed assets to form the share capital. From a legal point of view, share capital constitutes the general pledge of the company's creditors, in the sense that in the company's assets, which constitute the object of the general pledge of the company's creditors, there must be assets whose value is at least at the level of the share capital.

The nominal share capital is fixed throughout the company's existence. This means that, throughout the company's existence, the value of the company's patrimony must be at least at the level of the share capital and if the value of the asset decreases below the level of the share capital, Law no. 31/1990 imposes the obligation to reintegrate within a certain period, under penalty of the legal dissolution of the company or the reduction of the share capital.

The fact that the share capital must remain unchanged throughout the company's existence does not mean that contributions in cash or in kind are unavailable, but that the value of the share capital must remain unchanged, not its composition.

We can say that the two legal concepts, patrimony and share capital, have the same economic value from the moment the company is established until the start of economic activity. After this moment, the share capital will have the same economic value, but not necessarily the same composition, while the assets will have a variable economic value depending on the company's activity; if through legal acts concluded in order to carry out the object of activity, the company collects money, the assets will

[15] Law no. 31/1990, art. 91 paragraph 2, art. 11, art. 16 para. 1-3.

increase and the value of the company's assets will exceed the value of the share capital. However, if the company has to pay amounts of money, the liabilities will increase and the company's assets may be lower than the share capital.

As a conclusion, the share capital is fixed, has no real existence and is the value expression of the contributions of the associates, while the company's assets include all the rights and obligations, as well as the company's assets, having a composition and a value that varies, depending on the results of the company's activity.

Law no. 31/1990, amended and republished, does not provide a definition of the notion of share capital, nor of the notion of contribution, contenting itself with listing and describing the types of contribution that can be made on the occasion of the establishment of the share capital of a company, namely contributions in cash, in kind, in debts and in industry.

Any asset with economic value of the associate and that is of interest for the company's activity may be the object of the contribution. Art. 1881 para. 1 Civil Code, which refers to the partnership agreement, provides that the contribution can be in cash, in kind or in industry: "two or more persons mutually obligate themselves to cooperate in carrying out an activity and to contribute to it through monetary contributions, in goods, in specific knowledge or services, with the aim of sharing the benefits or taking advantage of the savings that could result"

The notion of contribution designates the obligation assumed by each associate to bring a certain asset, an economic value, to the company. Just as we consider the notions of subscribed share capital and paid-up share capital, we can also talk about the subscribed contribution, as the obligation *to give* assumed by the associate to transmit rights regarding a certain asset, as well as about the paid-up contribution, as the obligation *to make*, the actual delivery to the company of the contributed asset.

The associates' contributions, brought for the purpose of carrying out the economic activity and sharing the benefits obtained from the economic activity, represents the object of the associates' cooperation.

The associates' contributions become the property of the company from the moment of acquiring legal personality as a result of registration in the Trade Register. From the moment of entering into the ownership or use of the company, the contributions acquire a value expression and are integrated into the mass of assets that form the company's assets. From this moment on, the company can dispose of the assets constituted as a contribution, without the need for any amendment to the constitutive acts. The alienated asset is replaced by the value obtained as price or consideration, and the amount or consideration thus obtained is replaced by another acquired asset, without the patrimony, as a legal universality, suffering any change[16].

The contribution operation to the establishment of the share capital is a concrete legal act through which the associate transfers the ownership right, other real right or the right of use over an asset of his to the company's assets. Since it is a legal act of disposition, most of the time, all the essential and formal conditions must be met for the validity of the respective legal act, including the full capacity to act and the quality of owner of the asset if the ownership right is maintained. Also, if there is a right in co-ownership over the asset to be contributed, the consent of the co-owners is necessary for the contribution to be made.

[16] Gheorghe Piperea, Sorin David (coord.), *op. cit*, p. 69.

As previously mentioned, the Civil Code and art. 16 of Law no. 31/1990 on companies (as a special law) mention the types of contribution: cash, in kind, debts and industry. In our study, we will identify the types of contributions permitted by law when establishing a limited liability company.

The cash contribution represents the sums of money that the associate undertakes to transmit to the company, in case of non-payment on maturity, the associate will pay not only the amount to which he/she has committed, but also the legal interest, as well as any other damages that may result. This fact should not be confused with the provision of art. 68 of Law no. 31/1990 which provides that cash contributions are not interest-bearing.

The associate's cash contribution is "valued" at its initial nominal value from the moment of actual payment (this value may only be increased by incorporating reserves, benefits or issue premiums, which are ways of increasing the share capital).

Cash contributions are mandatory for any form of company, considering that the contributions of the associates are those that form the share capital, representing the cheapest source of financing intended to cover both the costs of establishing the company and those of initiating economic activity (we previously mentioned that the cash contribution is not interest-bearing).

The cash contribution will be paid into the company's current account opened specifically for this purpose based on the anticipated usage capacity that the legal entity acquires precisely in order to meet the legal conditions for establishment. In practice, this current account opened precisely for the payment of the cash contribution will be closed after the establishment of the limited liability company, and a new bank account will be opened through which the company will carry out its activity. Neither the Civil Code, nor Law no. 31/1990 conditions the making of the cash contribution, neither with regard to the amount, nor with regard to the persons contributing cash. The requirement is only the existence of the cash contribution. Therefore, this condition is also met if a single associate contributes an amount of money, however small, but with unitary value.

The contribution in kind consists of movable or immovable, tangible or intangible assets (securities, goodwill, technology, intellectual or industrial property rights).

Contribution in kind consists, most of the time, in the transfer of the ownership right over the contributed asset, the company becoming, from the moment of incorporation (or later, depending on the agreement of the members), the owner of the contributed asset. The owner of the contributed asset "*sells*" the asset and, in exchange for the "*price*", receives a share of the company's profits and losses. At the same time, contribution in kind may also consist of the transfer of the right of use over the contributed asset, the associate retaining his/her status as owner of the asset that he/she "*rents*" to the company, in exchange for the "*rent*", and will receive a share of the company's profits and losses. This is if there is an express agreement of the associates or an express clause in the articles of association.

Regardless of the type of contribution in kind (property right or right of use), according to Law no. 31/1990, the valuation of these assets is mandatory in the case of limited liability companies. The legal provision does not contradict the principle of the presumption of good faith, but rather comes to protect both the interests of the associates and the company, in the event that, involuntarily, due to error or ignorance, an associate would undervalue or overvalue the asset he intends to contribute, artificially and

incorrectly decreasing or increasing the real value of the share capital. Obviously, we are not considering bad faith, when the associate, with the intention of benefiting from a higher percentage of the benefits, tries to overvalue his asset. The assessment is carried out by an expert in the field, an independent person who, objectively, comes to specify the value of the asset to be contributed. If, however, new goods are contributed, the value of which can be proven with invoices, receipts, tax receipts or when, by their voluntary agreement of the partners regarding the value of their contributions, the assessment of the goods is no longer necessary.

The contribution consisting of non-fungible goods involves the transfer of ownership or use rights and their effective delivery, in working order according to the intended purpose of the goods. Until the moment of the transfer of ownership, the associate is liable for the risk of accidental loss of the goods, after which the risk will pass to the company. If the contribution in kind is made by transferring the right of use, the associate is liable to the company under the same conditions as a lessor would be liable to the lessee.

Also, depending on the nature of the goods, they may or may not be the subject of the contribution in kind. Thus, fungible or consumable goods cannot be contributed by transferring the right of use to the company, but by transferring the right of ownership, regardless of whether the contract provides otherwise. Fungible goods, being able to be replaced with similar goods in the execution of the obligation, cannot be identified for use or for return, while consumable goods that disappear, consume their substance through use, obviously cannot be returned. In the case of these goods, the transfer of ownership is achieved through individualization and the actual delivery of the goods.

The contribution in intangible assets may consist of securities or credit, goodwill and so on.

As a final clarification regarding the issue of the types of contribution permitted by art. 16 of Law no. 31/1990, when establishing a limited liability company, only cash contributions are permitted, which is, in fact, mandatory as well as contributions in kind. The other categories of contribution, in debts and in industry, are not permitted when establishing this type of company. Regarding the contribution in debts, considering the *intuitu personae* character of the limited liability company, art. 16 paragraph 3 of Law no. 31/1990 expressly prohibits this type of contribution. Regarding the contribution in industry, considering the limited and individual liability of the members of a limited liability company, this type of contribution is not even mentioned with reference to this type of company.

The subscribed share capital, consisting of the contribution in cash and, possibly, in kind, following the amendment of Law no. 31/1990 and the introduction of art. 9^1 paragraph. 2, no longer has to be paid in full at the time of the company's establishment, as provided for by the previous regulation, both for the limited liability company and for partnerships. Following the regulation of art. 9^1 paragraph. 2, the partners "*must pay 30% of the value of the subscribed share capital no later than 3 months from the date of registration, but before starting operations on behalf of the company, and the difference in the subscribed share capital will be paid: for the contribution in cash, within 12 months from the date of registration; for the contribution in kind, within a maximum of 2 years from the date of registration*".

We have previously criticized this new regulation, considering it to be lacking

in legal coherence and derisory of the idea of share capital[17]. We maintain our point of view, considering that this regulation, in an attempt to bring the limited liability company closer to capital companies, copied the similar provision regulated by law in the case of joint-stock companies. Moreover, the regulation is more favorable than the one applicable to joint-stock companies because the minimum percentage of 30% of the subscribed share capital does not have to be paid immediately, as is the case when establishing a joint-stock company, but, "*no later than 3 months from the date of registration, but before starting operations in the name of the company*".

The regulation is not only lacking in legal coherence, but it is also useless, most of the time. Since its regulation by Law no. 31/1990, the limited liability company has been perceived as a "family business", with a small number of members (often even members of the same family) who were liable within the limit of their contribution and with a low, but not non-existent, share capital. As we will see, theoretically, at this point, a limited liability company with two partners can be established with a share capital of 2 lei. Obviously, this is not always the case. But it is obvious that such a reduced share capital in value is not difficult to achieve, without the need for a staggered payment. That is precisely why the minimum threshold of 200 lei was previously regulated, neither too low nor too high, so that it is accessible.

If in the case of a joint stock company, the obligation to pay at least 30% of the subscribed share capital is justified, given the minimum value of the share capital in the case of this company, namely 90,000 lei or the equivalent of 25,000 euros. But in the case of a limited liability company, since the share capital can be even less than 200 lei, but higher than 2 lei, an almost derisory value, the introduction of the possibility of paying the subscribed share capital in installments is absolutely unjustified.

Beyond the personal criticism brought to the regulation, we must specify the difference in legal treatment for the two types of contribution allowed when setting up a limited liability company. If the remaining share capital that must be actually paid is a cash contribution, it must be paid into the company's account within a maximum of 12 months from its registration in the Trade Register. If the remaining share capital that must be actually paid is a contribution in kind, it must be paid and actually delivered to the company within a maximum of 24 months from its registration in the Trade Register.

As we have already stated, in the previous regulation, the minimum share capital for the establishment of a limited liability company was 200 lei. The legislative initiative to eliminate the minimum share capital of 200 lei in the case of a limited liability company took into account the fact that that minimum threshold was, in any case, insignificant compared to the economic evolution of Romania. Moreover, the share capital, although it represents the general pledge of unsecured creditors, is not held as a reserve at the disposal of potential creditors. It represents nothing more than another element in the company's balance sheet (namely, a debt of the company to the associates, which in the event of liquidation would return to the associates, after payment of all other debts to the company's creditors).

Through this measure, the legislator intended to harmonize national legislation with other legislative systems in which there is no requirement for a minimum share capital, such as Belgium, the Czech Republic, Finland, France, Greece, Ireland, Italy and other states that are not part of the European Union.

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[17] Adriana Deac, *op. cit,* p. 34.

Studies conducted on minimum share capital thresholds have shown that, where they are small or insignificant, as is the case in Romania, they do not represent a relevant indicator for the professional, nor a genuine guarantee for creditors. This is all more relevant where the funds subscribed as share capital can then be immediately withdrawn and used to cover the company's expenses, as is the case in Romania[18].

Therefore, the legislator, in order to facilitate access to this corporate form, also eliminated the minimum threshold of 200 lei, but this does not mean that the limited liability company can be established without share capital, given the provisions of art. 16 paragraph 1 of Law no. 31/1990 which specifies that cash contributions are mandatory for the establishment of any form of company, including the establishment of a limited liability company.

Art. 11 of Law no. 31/1990 establishes that, in the case of a limited liability company, share capital is divided into shares of equal value and which are not represented by negotiable securities. There is no reference to the minimum value of the shares, there being only the condition that they be equal and have a unitary value, as 1 leu.

Through two packages of fiscal measures, in August 2025, the Romanian Government proposed amending the legislation to establish measures to recover and streamline public resources and to supplement certain normative acts, including Companies Law no. 31/1990. According to the draft law, the minimum value of the share capital of limited liability companies would be established depending on the level of net turnover reported in the annual financial statements for the previous financial year, as follows: a) in the case of companies that registered a net turnover below 400,000 lei, the minimum value of the share capital is 500 lei; b) in the case of companies that registered a net turnover above 400,000 lei, the minimum value of the share capital is 5,000 lei. In the case of newly established limited liability companies, the minimum value of the share capital is 500 lei..... Limited liability companies registered in the trade register shall increase their share capital by amending the articles of association, but no later than 2 years from the date of entry into force of the legislative amendments, a term calculated from the date of registration of the increase mention in the trade register. If the limited liability company has not completed its share capital at the request of any interested person, as well as of the National Trade Register Office, the court shall pronounce the dissolution of the company. The company shall not be dissolved if, by the time the court decision of dissolution becomes final, the share capital is brought to the legal minimum value.

The reasons that led the Government to propose the legislative amendments are, in principle, the criticisms that we mentioned earlier, regarding the derisory nature of the share capital as well as the massive problem of ghost companies and Romania's record budget deficit - the largest in the EU, caused largely by poor collection.

To date, the draft law has not been adopted yet, as a result, we refer to it only as a proposal for *de lege ferenda*, and we will deepen the analysis in case the amendments become mandatory.

Therefore, at this time, a limited liability company can be established with a

[18] PL-x no. 599/2020, Draft Law for simplifying and debureaucratizing the transfer of shares and the payment of share capital by amending Law no. 31/1990 on companies, https://www.cdep.ro/proiecte/2020/500/90/9/em774.pdf, accessed on 20 December 2025.

minimum share capital of 2 lei, of which at least 1 lei is a cash contribution. Unfortunately, this interpretation, correct from a legal point of view, lacks, obviously, the legal logic.

The last issue addressed regarding the features of the limited liability company refers to the divisions of the share capital. According to art. 11 of Law no. 31/1990 on companies, "*the share capital of a limited liability company is divided into equal shares. The shares cannot be represented by negotiable securities*". Two elements are regulated, the name of the divisions of the share capital and their legal characteristics.

Depending on the type of company to which Law no. 31/1990 refers, the divisions of the share capital have different names. Thus, in the case of partnerships (general partnership and limited partnership) the share capital is divided into parts of interest. In the case of capital companies (joint-stock company and limited partnership by shares) the share capital is divided into shares. In the case of a limited liability company, the capital is divided into social parts.

Social parts represent participation titles in the share capital of a company established on the principle of trust between associates and on the principle of mutuality of the agreement of the associates, both with regard to the establishment of the company and with regard to the modification of the initial premises of the company, being granted to the members in exchange for their contributions and conferring on them the quality of associate, with all the rights and obligations associated with it.

Social parts certificates are forms of legitimation issued to confirm the quality of its holder as an implicit shareholder, an associate. The number and total nominal value are provided in the memorandum of association and articles of association, as well as the number of social parts attributed to each associate corresponding to his contribution.

In limited liability companies, the social parts are indivisible, they give equal voting rights to their holders, according to art. 193 paragraph 1 which establishes that, "*each social part gives the right to one vote"*.

When the holder of the social part is a single legal subject, there are, in theory, no special legal problems. If, however, a social part is owned jointly by several persons (in co-ownership on shares, in indivisible or undivided ownership), these legal subjects must designate a sole representative to exercise their related social rights under art. 1900 paragraph 2 Civil Code.

Regarding the legal characteristics of the social parts, we consider 3 aspects: whether they are transferable, whether their value is negotiable and whether or not they are represented by securities.

Regarding their transmissibility, the social parts are transmissible, both between the members of the limited liability company and towards third parties, outside the company. Depending on this criteria, Law no. 31/1990 establishes different conditions for transmission. Thus, according to art. 202, as amended, "*Social parts may be transferred between partners. Unless the articles of association provide otherwise, transfer to persons outside the company is permitted only if it has been approved by partners representing at least three-quarters of the share capital. In the case of the acquisition of a social part by succession, the provisions of para.2 shall not apply unless the articles of association provide otherwise; in the latter case, the company shall be obliged to pay the social part to the successors, according to the last approved balance sheet. If the legal maximum number of partners is exceeded due to the number of successors, they shall be obliged to designate a number of holders that shall not exceed*

the legal maximum. The provisions of para. 2 shall also apply in the case of a mortgage on the social parts, but only in relation to its establishment".

Social parts may be transferred by assignment, both free of charge and for a consideration, by inheritance or following the division of the spouses' common property after divorce.

Under the terms of art. 202 as amended by Law no. 3 1/1990, the transfer of social parts between associates is free, without meeting any special conditions, except for the legal conditions regarding the conclusion of the contract. The approval of the assignment is made by adopting the decision of the general meeting of associates voting with a double majority, the absolute majority of associates and social parts, unless otherwise provided in the memorandum of association and articles of association, according to art. 192. The absolute majority represents half plus one of the total number of associates, respectively of social parts[19].

If the transfer of social parts by assignment is made to non-associates, persons outside the company, the procedure is carried out in two different stages. The reason for this restriction lies in the *intuitu personae* character of the limited liability company.

First, the transfer of social parts must be approved by a decision of the general meeting adopted by a majority vote of 75% of the share capital, not just 51%. The regulation may seem exaggerated, but the purpose is precisely to prevent the violation of the personal character, *intuitu personae*, of the limited liability company. However, this character is much attenuated, given that, in the case of true partnerships, general partnerships and limited partnerships, the transmission of divisions of the share capital is almost impossible, except when the constitutive act provides for this and the decision is adopted by unanimous vote.

The same double majority is imposed by art. 202 para. 5 in the event that a mortgage is established on the shares.

The second stage is represented by the submission to the Trade Register of the decision of the general meeting approving the assignment and, subsequently, the publication of the decision in the Official Gazette for third-party effectiveness. This is the moment from which the assignment becomes mandatory for any legal subject, obviously, except for the case where the respective decision has not been challenged in court.

If the social parts are transmitted *mortis causa* through succession, unless the constitutive act provides otherwise, Law no. 31/1990 no longer requires the double majority, the company being obliged to pay the social parts to the successors based on the last approved balance sheet.

The provision of art. 11 para. 2, according to which the social parts cannot be represented by securities, should not be interpreted in the sense that the social parts are non-transferable, but in the sense that the social parts (divisions of the share capital) cannot be incorporated into securities that circulate freely on the market, as is the case with social parts or commercial securities.

Also, the social parts are not negotiable, in the event of their transfer, their value being their nominal value. Regarding this aspect, there are some opinions in the doctrine according to which the social parts of the limited liability company would be negotiable, an opinion that we do not share.

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[19] Adriana Deac, *op. cit,* p. 36.

3. Conclusions

The analysis of the legal characteristics of the limited liability company outlined the elements that differentiate this corporate form from the other types of companies regulated by Law no. 31/1990, as well as from other professional traders legal entities. The reduced number of members, the lack of a minimum share capital and the *intuitu personae* character (it is true, much attenuated), as specific features of partnerships, as well as the limited and individual liability of the partners who may be obliged to answer for the company's debts only proportionally to the value of their contribution to the establishment of the share capital and maximum up to the competition of the value of their contribution, a specific feature of capital companies, represent arguments in favor of establishing a limited liability company.

These arguments determined that, in 2024, according to official data, approximately 750,000 active limited liability companies that have filed their balance sheets will be registered, of which 362,575 companies with a turnover below 3,950,000 lei and which now have a share capital of less than 500 lei (of which, 329,049 limited liability companies have a share capital of 200 lei) and 171,950 companies had a turnover of over 395,000 lei, but below 7 million lei (131,224 of these companies have a share capital of 200 lei). It is obvious that the features that made this type of company so attractive also have unfavorable fiscal consequences, the low level of collection of taxes, duties and social contributions to the state budget being perhaps the biggest problem.

The legislative initiative to increase the share capital would require a major financial effort from existing or future limited liability companies, especially in the case of those companies with a turnover exceeding 400,000 lei, which would require a minimum share capital of 5,000 lei. At the same time, a share capital of 500 lei or even 5,000 lei would represent a guarantee of the seriousness of the company in question, its establishment assuming, at least theoretically, the existence of a real will to establish a limited liability company that would actually function.

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