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Chapter I
Introduction

Section 1. General Overview on Romanian Company Law

The revival of the Romanian company law is an evolutionary process of the last 30 years. The legislative, doctrinal and case-law developments after the fall of communism in 1989 primarily supported and secured the transition towards a liberal market economy; subsequently, they were influenced by the need of harmonization with the *acquis* prior to Romania's accession to the European Union in 2007; now, they endeavour to ensure a balanced and competitive regulatory framework and to sustain an economic environment facing the challenges of globalisation.

An anatomical overview on the Romanian positive law applicable to companies displays a multi-level structure[1]: (i) the general law on partnerships (Romanian *societăţi*) – Romanian Civil Code (hereinafter 'R.C.C.'); (ii) the general law on (commercial) companies with legal personality [Romanian *societăţi (comerciale) cu personalitate juridică*] – Act no. 31/1990 on Companies[2] (Romanian *Legea societăţilor*, hereinafter '*A.C.*'), including both the general legal regime for commercial companies and the special legal regime for each type of commercial company; (iii) the special corporate law – sectorial regulations on certain types of commercial companies (such as credit institutions, insurance companies, capital market intermediaries etc.). This structure is vertically governed by the *specialia generalibus derogant* principle and has horizontal connections not only with general

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[1] Cărpenaru, 121–125; Motica-Bercea [1], 92 and 93; Motica-Bercea [2], 91 and 92; Cărpenaru, Piperea, David, 2–6. For other comprehensive analyses of the regulatory framework on commercial companies, see, chronologically, Căpăţînă; Şcheaua; Schiau-Prescure; Turcu; Sitaru-Sitaru; Şandru [3]; Bodu [2].

[2] Until 2012, Act no. 31/1990 on Commercial Companies. As part of the private law unification process, the new Romanian Civil Code imposed a uniform terminology, correlated to its new legal concepts (Nicolae, 470–475). One of the most radical reform actions was the elimination of the term 'commercial' (Romanian *comercial*) and its derivations from a series of positive law sources, including Act no. 31/1990 on Commercial Companies, which was renamed as Act no. 31/1990 on Companies. The term 'commercial' was eliminated from the syntagm 'commercial company' (Romanian *societate comercială*), generating a homonymy of the term 'company' (Romanian *societate*), which consequently denominates any partnership regulated by the general law on partnerships (Romanian Civil Code) and the types of companies with legal personality regulated by the special law on companies (Act no. 31/1990). Nevertheless, the commercial nature of the companies falling under the latter regulation remained (uncontestably) unchanged. For a multiperspectival analysis of the effects of the new Romanian Civil Code on the commercial regulatory framework, see Bufan-Catană-Bercea.

civil law, particularly with the law of legal persons (applicable to companies with legal personality) and contract law (applicable to articles of incorporation or shareholders agreements[1]), but also with labour law (relevant for certain principal – agent relationships in case of company executives), common civil procedure law (governing the specific judicial proceedings regarding the legal status of the company), tax law (with regard to profit or capital gains taxation), capital market law (governing the transactions with shares and bonds issued by listed companies), competition law (prohibiting the anticompetitive practices and limiting the economic concentrations), or criminal law (sanctioning the offences committed by the company or its agents).

The R.C.C. provides a general regime applying to partnerships and legal persons companies included –, while also unifying classic civil law and commercial law into a unitary private law system, which covers the relationships between both professionals and non-professionals. Professionals are natural persons or legal persons who exploit an enterprise, systematically exercising an organized activity of production, administration or selling of goods or provision of services, for profit or not for profit[2]. Professionals have to comply with specific professional duties[3]: duty to be registered with the Registry of Commerce according to Act no. 26/1990 on the Registry of Commerce, duty to keep accurate financial records according to Act no. 82/1991 on Accounting, duty to observe the competition rules provided by Act no. 21/1996 on Competition and by Act no. 11/1991 on Combatting Unfair Competition or the consumer protection rules provided by Act no. 296/2004 on Consumer Code etc.

A natural person may perform economic activities under three different forms of business organisation regulated by G.E.O. no. 44/2008 on the Performance of Economic Activities by Natural Persons, which are not corporate structures, but individual economic initiatives[4]: (i) authorised natural persons (Romanian *persoane fizice autorizate*; hereinafter 'PFA'), (ii) holders of an individual enterprise (Romanian *titulari ai întreprinderii individuale*; hereinafter referred to as 'II'), and (iii) members of a family enterprise (Romanian *membri ai întreprinderii familiale*; hereinafter 'IF'). A PFA is the natural person authorised to carry out any economic activity prescribed by law, using mainly its work capability; an II is the economic enterprise, without legal personality, organised by an entrepreneur natural person; an IF is the economic enterprise, without legal personality, organised by an entrepreneur natural person together with his/her family. These forms of business organisation receive the professional status from the moment of registration into the Registry of

[1] For an analysis of different types of unregulated agreements relevant for company law, see Bercea [9]. For an analysis of different types of shareholders agreements, see Şandru [1].

[2] Art. 3 R.C.C. For an analysis of the legal status of professionals under R.C.C., see Piperea [3], 31–35; Angheni, 1–6.

[3] For an analysis of these professional duties, see Cărpenaru, 69–95; Motica-Bercea [1], 43–67; Motica-Bercea [2], 44–68.

[4] Cărpenaru, 42–46.

Commerce. None of them holds separate legal personality or a patrimony distinct from that of the natural persons organising them. Consequently, their responsibility is covered first by the assigned patrimony (Romanian *patrimoniu de afectaţiune*, meaning the assets assigned by the entrepreneur to the performance of an economic activity), if such patrimony has been constituted, and if that does not suffice, by the entire patrimony of the natural person.

Under Romanian law, companies with legal personality[1] are considered to be professionals exploiting an enterprise for profit. There are several categories of legal persons enabled to carry out economic activities, regulated by a series of general or sectorial acts: Act no. 31/1990 on Companies, Act no. 15/1990 on the Reorganisation of State-Owned Economic Enterprises as Autonomous Public Companies and Commercial Companies, Act no. 1/2005 on the Organisation and Functioning of the Cooperation etc. The main categories of companies with legal personality referred by these regulations are: (commercial) companies (Romanian *societăţi comerciale*, SC), national corporations (Romanian *companii naţionale*, CN), national companies (Romanian *societăţi naţionale*, SN), autonomous public companies (Romanian *regii autonome*, RA), economic interest groupings (Romanian *grupuri de interes economic*, GIE), cooperative companies (Romanian *societăţi cooperative*, SCo), the *societas europaea* (SE), European Cooperative Societies (Romanian *societăţi cooperative europene*, SCoE), and European Economic Interest Groupings (Romanian *grupuri europene de interes economic*, GEIE) having their headquarters in Romania.

The legal framework applicable to commercial companies is comprised, on the most general level, of the relevant provisions of the R.C.C., mainly art. 1881–1948 regulating the partnership agreement (Romanian *contractul de societate*), including the so-called ‘simple partnership’ (Romanian *societatea simplă*) and the ‘partnership association’ (Romanian *asocierea în participaţie*), both of them without legal personality. By the partnership agreement, two or more persons commit themselves to cooperate in order to carry out an activity and to contribute to it by cash, in kind, in specific knowledge or supply of activities, with the purpose of sharing the benefits or to use the returns that may be obtained. Every member of the partnership bears the losses proportionally to the quota of the benefits he/she is entitled to, unless otherwise stipulated in the contract. The regulation on partnership agreement is applicable to all companies, unless stipulated otherwise in the articles of incorporation or where these do not hold any statutory mention[2]. While the R.C.C. legal framework for the contract of partnership constitutes the general regulation on partnerships, special positive law may regulate various types of partnerships with regard to their legal form, nature and object of activity[3].

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[1] For an analysis of the legal personality in the law of organisations (and its corporate law implications), see Bojin [2].

[2] For an analysis of the applicability of the partnership agreement regulation to commercial companies, see Săuleanu, 19–25; for an analysis of the partnership agreement under the former R.C.C., see Popescu.

[3] Art. 1887 R.C.C.

The partnership members may agree to form a partnership with legal personality, observing the special legal rules regarding a certain type of company and its registration into the Registry of Commerce[1]. A partnership with legal personality is imperatively based on a written partnership agreement, which must stipulate *inter alia* the partners, their contribution, the legal form of partnership, its object of activity, name and headquarters[2]. The members' contributions become the property of the partnership[3], which has a patrimony distinct from those of its members.

The partnerships holding legal personality are also subject to the R.C.C. regulation on legal persons (Romanian *persoane juridice*) in art. 187–251. The constitutive elements of a legal person include its freestanding organisation and its patrimony, assigned to a licit and moral purpose, in accordance with the general interest[4]. The general regulation on legal persons comprises generic provisions on creation, capacity and functioning, identification, reorganisation and winding up of the legal person, applicable in absence of a specific regulatory framework for a certain category of legal entities[5].

On a different regulatory level, both the general and specific rules applicable to commercial companies with legal personality are found in the A.C., which is formally divided into several essential sections (on incorporation of companies, functioning of companies, changes to the articles of incorporation, members exclusion and withdrawal, winding up, merger and demerger of companies, liquidation of companies) and other sections (on *societas europaea*, contraventions and offences etc.). This legislative technique harbours a more important, substantial division of the A.C.'s normative content into two categories of provisions – a common regulation applicable to all types of commercial companies, as well as specific provisions for each of the five types of commercial companies governed by A.C. While the A.C. section on functioning of companies[6] is apparently the only one based on this binary distinction, the substantive separation between the common rules applicable to all types of companies and the specific rules applicable to a certain type of company represents the cornerstone of this regulation, along with the complex problem of the admissibility of an extensive application of the specific rules applicable for one type of company to other types of companies, in the absence of a specific regulation in a certain matter.

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[1] Art. 1889 R.C.C.

[2] Art. 1884 R.C.C.

[3] Art. 1883 R.C.C.

[4] Art. 187 R.C.C.

[5] Art. 192 R.C.C. For an analysis of the general regulation on legal persons, see Piperea [3], 88–152; Nicolae-Bîcu-Ilie-Rizoiu, 257–433.

[6] Art. 65-203 A.C.

Section 2. Historical Evolution of Romanian Company Law

The first modern Romanian regulation on companies was the Commercial Code 10 (Romanian *Codul Comercial*) adopted in 1887, closely following the model of the Italian *Codice di Commercio* of 1882. In Book I, Title VIII (*On Companies and Commercial Partnerships*, art. 77-269), the Commercial Code provided special rules for a number of corporate entities: the collective name company (Romanian *societatea în nume colectiv*, SNC), the limited partnership (Romanian *societatea în comandită simplă*, SCS), the stock corporation (Romanian *societatea pe acţiuni*, SA), and the partnership limited by shares (Romanian *societatea în comandită pe acţiuni*, SCA). The Code also regulated the 'partnership association' (Romanian *asocierea în participaţie*), without legal personality.

The roots of these corporate regulations are to be found in the Belgian company law of 1873[1]. With reference to the Commercial Code regulation on companies, the doctrine remarked the increase of the public order imperative rules for corporate structures and the risk of abuse of the limited liability benefit applicable to joint-stock companies (the only type of company with limited liability of the shareholders, in the absence of a regulation of the limited liability company)[2]. Despite these critiques, the Commercial Code regulation on companies contributed to the strong development of the Romanian economy in the interwar period (1919–1938). The application of a new Commercial Code (Romanian *Codul Comercial Carol al II-lea*), based on a project drafted in 1938 and adopted in 1940, was abandoned as the Second World War started[3].

After the Second World War, Romania fell under the influence of the Soviet Union, along with other Central and Eastern European countries, and the Romanian economy suffered a radical reform. The vast majority of private companies were nationalized and the state enterprise (Romanian *întreprindere*) or entity (Romanian *unitate*) became the main economic agent, vector of the socialist planned economy. A series of regulations (e.g. Act no. 11/1971 on the Organisation and Management of Socialist State Enterprises; Act no. 5/1978 on the Organisation and Management of Socialist State Enterprises and their Functioning on the Basis of Workers Self-Direction and Economic-Financial Self-Management; Act no. 6/1988 on the Legal Status of the Socialist Enterprises Based on the Principles of Workers Self-Direction and Economic-Financial Self-Management etc.) gradually amplified the strict state economic planning and the influence of the centralized political decision on the activity of state enterprises. From 1947 until 1989, the private economic initiative was drastically limited by the socialist regulatory framework –

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[1] Georgescu, 40.

[2] Georgescu, 71, 125.

[3] This new Commercial Code was formally abrogated only in 2011, together with the Commercial Code of 1887 (except for certain legal rules from the latter), by Act no. 71/2011 on the Application of the Civil Code.

and was practically inexistent –, therefore the provisions of the Commercial Code on companies – although not formally abrogated – were inapplicable.

After the fall of the communism at the end of 1989, the Romanian economy went through a reverse (but equally radical) reform process. Even before a new democratic Constitution was enacted in 1991 – stating that the Romanian economy is a market economy, based on free initiative and competition[1], and guaranteeing the free access to economic activities and the free initiative[2] –, several regulations adopted in 1990 paved the way towards a liberal economy. The state enterprises were transformed into state-held companies by Act no. 15/1990 on the Reorganisation of State-Owned Economic Enterprises as Autonomous Public Companies and Commercial Companies. A new regulation on commercial companies having legal personality (Act no. 31/1990 on Commercial Companies, Romanian *Legea societăţilor comerciale*) was promptly adopted and became the main pillar of the Romanian company law system. This regulation added to the four types of company governed by the provisions of the Commercial Code (which were repealed and replaced by the A.C.) a fifth one, absent from the 19th century regulation – the limited liability company (Romanian *societatea cu răspundere limitată*, SRL). Simultaneously, a complementary law on the organization of the publicity of commercial professionals, including companies (Act no. 26/1990 on the Registry of Commerce) created a state-held institutional framework for company registration.

Although A.C. was successively modified[3], it enjoyed a remarkable degree of stability and coherence as compared to other national regulations relevant for the economic system and the business environment (e.g. in fiscal or insolvency matters[4]). The most significant and substantial reform of A.C. was generated, prior to Romania's accession to the European Union in 2007, by the need to harmonize the Romanian company law with the European *acquis*[5] and to transpose the corporate governance principles[6]. Act no. 441/2006 added several relevant provisions, particularly for stock corporations, on their organisational structure, the decision-making process, and the company management and control[7], for instance strengthening the fiduciary duties of the company directors and correlatively ensuring their protection

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[1] Art. 135 par. (1) Constitution of Romania.

[2] Art. 45 Constitution of Romania.

[3] The most important changes of A.C. were adopted in 1997, 1999, 2000, 2001, 2003, 2004, 2005, 2006, 2008, 2009, 2010, 2011, 2012, 2015, 2018, 2019, and 2020.

[4] For an analysis of the changing regulatory framework in insolvency proceedings, see Bufan et al.; Piperea [2].

[5] For an analysis of the harmonization of the company law by means of EU directives, see Şandru [2], 13.

[6] Another example of relevant legislation prior to Romania's accession to the European Union is Act no. 161/2003 on Ensuring Transparency in Exercising Public Dignities, Public Offices and in Business Environment, Prevention and Sanctioning of Corruption.

[7] For an analysis of the transposition of corporate governance principles into Romanian company law in 2006, see Jessel-Holst, 34; Peligrad, 23.

under the business judgment rule[1]. Similar corporate governance principles and rules were enforced to state-owned enterprises in 2011[2].

In addition to the general regulatory framework on commercial companies, certain particular economic situations imposed the adoption of transitory regulations related to economic reforms, especially to the privatisation of state-held companies (e.g. G.E.O. no. 88/1997 on Privatisation of Commercial Companies; Act no. 137/2002 on Certain Measures Accelerating Privatisation). Special legislation aiming at stimulating the sector of small and medium-sized companies was also adopted: Act no. 346/2004 on Stimulating the Founding and Development of Small and Medium-Sized Enterprises; G.E.O. no. 6/2011 on Stimulating the Founding and Development of Micro-Enterprises by Young Entrepreneurs; Act no. 120/2015 on Stimulating the Individual Investors – "Business Angels". However, the multiplication of the special statutes and correlatively of the atypical forms of company is not an excessive practice under Romanian company law.

Furthermore, specific legislation concerning certain key economic sectors (banking, insurance etc.) was gradually enacted[3], correlatively imposing sectorial authorization and supervision requirements enforced by the competent administrative authorities (e.g. National Bank of Romania for credit institutions; Financial Supervision Authority for the capital market, insurance market and private pension system etc.)[4]. A complex legal framework concerning the capital market was concurrently created: Act no. 297/2004 on the Capital Market initially regulated the financial instruments market and was followed by several regulations; Act no. 24/2017 on Financial Instruments Issuers and Market Operations provides a further regulation on market operations with financial instruments admitted to trading on a regulated market, the legal status of issuers of financial instruments, initial public offerings and market abuse; Act no. 126/2018 on Financial Instruments is applicable to financial investment service companies, market operators, data reporting service providers, central depositaries, central counterparts, investment companies that operate in Romania; Act no. 158/2020 amended this legislation with relation to the recent European Union sectorial developments. In spite of this comprehensive regulatory framework, the national capital market, using the Bucharest Stock Exchange (Romanian *Bursa de Valori Bucureşti*), is severely underdeveloped.

A need for the actualization and optimization of the A.C. is currently discussed among academics and legal practitioners. Some of the main requirements concern the

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[1] For a diachronic analysis of the legal transfer of business judgment rule into Romanian company law, see Bercea [3], 201; Bercea [4], 159; Bercea [5], 26; Bercea [7], 80; Bercea [8], 412.

[2] Catană [3], 5. The relevant regulation is G.E.O. no. 109/2011 on the Corporate Governance of the State-Owned Enterprises.

[3] E.g. G.E.O. no. 99/2006 on Credit Institutions and Capital Adequacy, Act no. 237/2015 on the Authorization and Supervision of Insurance and Reinsurance Activity etc. The initial post-1989 regulations in these economic sectors were adopted in 1991.

[4] For a sectorial analysis of the corporate status of the credit institutions, see Bercea [1], 100; Bercea [2], 356.

development of a complete and more adequate framework for the limited liability company and the creation of an equivalent of the simplified stock corporation, bridging the gap between the basic regime of the limited liability company and the complex regulation for the stock corporation.

Section 3. Company Types under Romanian Company Law

As a concept, the commercial company is a legal person constituted by the association of natural or legal persons, based on a company contract (Romanian *contract de societate*) and on a bylaws (Romanian *statut*), who commit themselves to cooperate in order to carry out an economic activity and to contribute to it by cash or in kind[1], with the purpose of gaining and sharing the benefits that may be obtained[2]. The main common elements of a commercial company are the members' contribution to the share capital, *affectio societatis*, and the members' participation to the distribution of benefits[3].

The five types of commercial companies with legal personality regulated by the A.C. are[4]:

– the collective name company (Romanian *societatea în nume colectiv*, SNC), whose debts are guaranteed by its patrimony and whose members have a joint and unlimited liability for the company's debts[5];

– the limited partnership (Romanian *societatea în comandită simplă*, SCS), whose debts are guaranteed by its patrimony and whose unlimited partners (Romanian *comanditaţi*) have a joint and unlimited liability for the company's debts, while its limited partners (Romanian *comanditari*) are held liable only within the limits of their contribution to the company's capital[6];

– the stock corporation (Romanian *societatea pe acţiuni*, SA), whose debts are guaranteed by its patrimony and whose members are held liable only within the limits of their contribution to the company's capital, which is divided by shares (Romanian *acţiuni*)[7];

– the partnership limited by shares (Romanian *societatea în comandită pe acţiuni*, SCA), whose debts are guaranteed by its patrimony and whose unlimited partners

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[1] The contributions in kind may include accounts receivables, in case of the initial subscription for stock corporations, except for the public offering (art. 16 A.C.).

[2] Cărpenaru, 126 and 127; Motica-Bercea [1], 90–92; Motica-Bercea [2], 90 and 91.

[3] For an analysis of the common elements of a commercial company, see Cărpenaru, 133–148; Motica-Bercea [1], 96–102; Motica-Bercea [2], 95–101.

[4] Art. 2 A.C.

[5] For an analysis of the legal status of the collective name company, see Cărpenaru, 296–306; Motica-Bercea [1], 155–163; Motica-Bercea [2], 151–158; Cărpenaru-Piperea-David, 260–298.

[6] For an analysis of the legal status of the limited partnership, see Cărpenaru, 307-312; Motica-Bercea [1], 163–169; Motica-Bercea [2], 159–163; Cărpenaru-Piperea-David, 299–306.

[7] For an analysis of the legal status of the stock corporation, see Cărpenaru, 313–368; Motica-Bercea [1], 169–196; Motica-Bercea [2], 164–193; Cărpenaru-Piperea-David, 307–641.

(Romanian *comanditaţi*) have a joint and unlimited liability for the company's debts, while its limited partners (Romanian *comanditari*) are held liable only within the limits of their contribution to the company's capital (which is divided by shares)[1];

– the limited liability company (Romanian *societatea cu răspundere limitată*, SRL), whose debts are guaranteed by its patrimony and whose members are held liable only within the limits of their contribution to the company's capital, which is divided by membership units (Romanian *părţi sociale*)[2]; the limited liability company is the only type of commercial company which can be founded by a single member[3].

The classification of commercial companies groups them, primarily, according to the nature of the association, into (i) partnerships (Romanian *societăţi de persoane* – SNC and SCS), founded by a small number of persons, based on mutual acquaintance, trust and in consideration of the personal qualities of the founders (*intuitu personae*); (ii) corporations (Romanian *societăţi de capitaluri* – SA and SCA), founded by a high number of persons, generated by the need to cover the entire share capital, without regard to the personal qualities of the shareholders, the essential element being the quota of the contribution invested to the capital (*intuitu pecuniae*), correlated to the possibility of raising capital through public offerings of bonds; (iii) the limited liability company, SRL, which borrows features from both partnerships – the limitation of the maximum number of members and of the possibility of transmission of membership units – and corporations – the limited liability of the members for the company's debts –, but which have more elements in common with partnerships with regard to their organisational structure, the decision-making process, the duties and powers of the directors, and the corporate control mechanisms.

The law gives freedom of choice for the founders in selecting the type of their future company[4], as well as in changing it[5], on condition that the specific legal framework for that type of company is observed. Exceptions exist in the public interest economic sectors, where a certain type of company is compulsory (i.e. generally the stock corporation): credit institutions (including financial leasing companies), insurance companies, financial investment and financial services companies etc. Complementary to this freedom of choice, the principle of adaptability of the articles of incorporation (Romanian *act constitutiv*) to the members' interests is widely recognized, but less frequently practiced. Company founders are allowed to insert in the articles of incorporation *ex novo* terms (for

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[1] For an analysis of the legal status of the partnership limited by shares, see Cărpenaru, 369–372; Motica-Bercea [1], 196–198; Motica-Bercea [2], 193 and 194; Cărpenaru-Piperea-David, 642–647.

[2] For an analysis of the legal status of the limited liability company, see Cărpenaru, 373–398; Motica-Bercea [1], 198–209; Motica-Bercea [2], 195–205; Cărpenaru-Piperea-David, 648–708.

[3] Cărpenaru-Piperea-David, 55–61; however, there are several state-owned companies incorporated as single-member stock corporations.

[4] Cărpenaru, 149 and 150; Motica-Bercea [1], 94; Motica-Bercea [2], 93; Bodu [1], I, 24.

[5] Cărpenaru, 270; Bodu [1], I, 26.

regulating a matter not regulated by legal rules), as well as terms derogating from suppletory legal rules (displacing the legal rule in a certain matter), but not from the imperative ones. A commercial company incorporated according to A.C. and having its registered seat in Romania is a legal person governed by Romanian law[1].

The five types of commercial company regulated by A.C. constitute a finite series[2]. There is an express prohibition to create a hybrid company: once the type of company has been chosen, the members are bound to the legal provisions governing that respective type, and may not establish an unnamed company, by combining elements specific to different types. However, the concise regulation[3] of both the general regime applicable to all companies and of the most popular type of company, the limited liability company, SRL, entails the *mutatis mutandis* applicability of certain rules for the stock corporation, SA, to the limited liability company, SRL, on condition of their compatibility with the latter[4]. The compatibility problem is addressed by A.C., which expressly prohibits the extensive application of the rules on management of stock corporations to the limited liability companies[5]. *A contrario*, other non-idiosyncratic rules provided for stock corporations may be applied to limited liability companies.

The limited liability is plainly at the core of investors' criteria in deciding in favour of a company type. The true option for the founders of a Romanian company is choosing between SA and SRL. This explains the dominant position of SA and SRL in corporate practice, doctrine, and case-law. Further, in opting for one of these two forms of business organisation, the criteria for making the choice usually regards the forecasted size of the company (as SRL is theoretically designed for small enterprises, and SA for large enterprises), correlated with the capital requirements[6] and organizational structure, mainly the rules on the decision-making process, the duties and powers of the directors, and the corporate control mechanisms.

The complex organisational structure of the stock corporation entails a variety of organs and bodies for the company management – based on the primary division between the monistic and dualistic management systems –, augmented by a sophisticated delimitation of competences and hierarchy among these organs and bodies, as well as by setting up specific powers, duties and liabilities for them and

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[1] Art. 1 par. (2) A.C.

[2] Cărpenaru, 149; Motica-Bercea [1], 94; Motica-Bercea [2], 93; Cărpenaru-Piperea-David, 53.

[3] A statistical approach of the A.C. indicates a major quantitative disproportion among the legal texts relating to each type of company. While 13 articles form the general part of the regulation on functioning of commercial companies, the distribution of the specific texts is manifestly uneven: 13 articles for SNC, 3 articles for SCS, 4 articles for SCA, 14 articles for SRL, and 127 for SA.

[4] For an analysis of the applicability of the general legal framework on functioning of commercial companies to the limited liability company, SRL, see Piperea [3], 249–251.

[5] Art. 197 par. (4) A.C.

[6] A minimum capital is required only for SA (i.e. 90.000 RON, approximately 20.000 EUR).

their members[1]. In addition, the legal status and function of the general meeting for stock corporations encompass both the need for an efficient decision-making process and the imperatives of protecting minority interests[2] and investors' interests. Consequently, the regulation includes not only rules ensuring legitimacy of the decisions (with regard to shareholders participation quorum, the regular majority rule and the exceptional unanimity rule[3]), but also rules for formal and substantive minority protection[4] (qualified majorities, minority control rights above a certain percentage, an individual right to information, the duty to abstain from voting in case of conflict of interest, an individual right to petition to nullify a resolution[5], a right to petition for the management liability[6], a withdrawal option for the minority shareholder etc.), correlated with a standard of conduct in exercising shareholders' rights (in good faith and respecting the legitimate rights and interests of the company and of the other shareholders[7]) and rules for the effective protection of creditors and other stakeholders[8] (capital maintenance rules, external control rules or rules regarding the shareholders liability based on piercing the corporate veil).

The simple and flexible organisational structure of the limited liability company, as compared to the complex organisational structure of the stock corporation, correlated to the unsophisticated rules on the decision-making process (the unanimity rule for changing the articles of incorporation and the double majority rule for the other decisions), the duties and powers of the directors (entitled to represent the company individually and with full powers), and the less stringent corporate control mechanisms explain the statistically categorical option of the founders of a Romanian small or medium-sized enterprise for the limited liability company.

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[1] For an analysis of the powers, duties and liabilities of the company management, see Piperea [1]; for an analysis of the legal regime on representation of the company, see Bodu [1], I, 153–196.

[2] For an analysis of the decision-making process in the general meetings and the protection of minority interests, see Stârc-Meclejan [1].

[3] For an analysis of the rules ensuring legitimacy of the shareholders decisions, see Catană [2], 1–61.

[4] For an analysis of the rules ensuring formal and substantive minority protection, see Catană [2], 62–106; for an analysis on the influence of the judiciary mechanisms on functioning of commercial companies, see Catană [1]; for an analysis of the democratic deficit under Romanian company law, see Bercea [6], 539.

[5] For an analysis of the action for nullifying the shareholders' resolutions, see Bojin [1].

[6] For an analysis of the action for the management liability, see David-Baias, 13; for a case-law analysis in the matter, see Tec, 27.

[7] Art. 136[1] A.C. The autonomous enforcement of this standard of conduct is however difficult, given the plurality of concurrent (and frequently conflicting) interests (Catană [2], 107–159).

[8] For an analysis of the mechanisms for the protection of creditors, see Piperea [3], 187–190, 244–249, 267–268; for an analysis of the corporate social responsibility problems under Romanian law, see Stârc-Meclejan [2].