

# The Management of the Joint Stock Companies

~ Ph. D. **Dan Cimpoeru** (Faculty of Business and Administration, University of Bucharest, Romania)

E-mail: [dcimpoeru@gmail.com](mailto:dcimpoeru@gmail.com)

**Abstract:** *In the joint stock company there are three types of bodies: deliberative and decision-making (general meeting of shareholders), executive and management (administrator, administrators, Administrative Board, Directorate or Supervisory Board) and management control (auditors). The shareholders may set by the constitutive act other organs of society than those provided for under company law. An important role in the organization of a company has the administrators who have responsibilities in the sphere of internal management acts and representation in relations with third parties. Under the Romanian legal provisions, the joint stock companies may be managed in two systems: unitary and dualist.*

**Key words:** unitary system, dualist system, administrative board, directorate, joint stock company

## Introduction

Within the different categories of companies, the joint stock companies occupies an important place with a special configuration. The joint stock companies are companies able to manage large capital business

(Turcu, 2008 Sandru, 2006). The advantage of this form of society is that shareholders can invest money without incurring a unlimited risk (Guyon, 2003). In the specialized literature, it has shown that this form of business organization is the most efficient from economic perspective: the liability of

shareholders is limited to the share capital of the company (Mestre, Pancrazi, 2006). In this type of society, the shareholder like a person shows a particular importance, what matters is the purpose of this association that attracts as many small capital but which together can provide business support large scale. The company shall be regarded as fitting the capitalist regime (Ripert, Roblot, 2002).

In the joint stock company there are three types of bodies: deliberative and decision-making (general meeting of shareholders), executive and management (administrator, administrators, Administrative Board, Directorate or Supervisory Board) and management control (auditors). The shareholders may set by the constitutive act other organs of society than those provided for under company law. An important role in the organization of a company has the administrators who have responsibilities in the sphere of internal management acts and representation in relations with third parties. The administrator has full power of decision for all management operations, except for acts which are assigned or reserved by law to other organs of society and those which are prohibited by the constitutive act (Cârpenaru, David, Predoiu, Piper, 1998). In doctrine, the administrator of a company shall mean a natural or legal person by its permanent representative, associated or not, who under the mandate of empowerment resulted and the specific rules of Law. 31/1990, transposes in practice the company will by exercising any operations required for the fulfillment of the object of activity and social will except restrictions prescribed by law or the Articles of Incorporation (E. Munteanu, 2000).

The management of the joint stock companies is regulated by articles 137 - 1551 of Law no.31/1990<sup>1</sup> of the companies as amended by Law no. 441/2006. Under these legal provisions, the joint stock companies may be managed in two systems: unitary and dualist. The law modification has made substantial changes in the way the management of the joint stock companies.

Through the new legislation it was implemented in Romania the principles of corporate governance as they are imposed by

<sup>1</sup> Law no. 31/1990 on companies was originally published in Official Gazette No. 126/17.11.1990. Over time it has undergone many changes and additions. Also, to date, Law no. 31/1990 on companies has been republished twice in the Official Gazette No. 33/29.01.1998, respectively, in the Official No. 1066/17.11.2004. After the second reprint has been modified and supplemented by the following laws: Law no. 302/2005 (OJ no. 953/27.10.2005), Law no. 85/2006 (OJ no. 359/21.04.2006), Law no. 164/2006 (OJ no. 430/18.05.2006), Law no. 441/2006 (OJ no. 955/21.11.2006), Government Emergency Ordinance no. 82/2007 (OJ no. 446/29.06.2007), Government Emergency Ordinance no. 52/2008 (OJ no 333/30.04.2008), Law no. 284/2008 (OJ no. 778/20.11.2008), Law no. 88/2009 (OJ no. 246/14.04.2009), Government Emergency Ordinance no. 43/2010 (OJ no. 316/13.05.2010), Government Emergency Ordinance no. 54/2010 (OJ no. 421/23.06.2010), Government Emergency Ordinance no. 90/2010 (OJ no. 674/04.10.2010), Law no. 202/2010 (OJ no. 714/26.10.2010), Government Emergency Ordinance no. 37/2011 (OJ no. 285/22.04.2011), Law no. 71/2011 (OJ no. 409/10.06.2011), Government Emergency Ordinance no. 2/2012 (OJ no. 143/02.03.2012), Law no. 76/2012 (OJ no. 365/30.05.2012) - law that changes the name of the Law „on commercial companies” in the Law „on companies”, Government Emergency Ordinance no. 47/2012 (OJ no. 635/06.09.2012).

the EU *acquis* in the field of companies and standards of the Organisation for Economic Cooperation and Development in the field of the corporate governance.

To achieve these goals aimed to transpose more directives :

- Council Directive no. 68/151/EEC of 9 March 1968 on coordination of safeguards, companies are required by Member States<sup>2</sup> ;

- Council Directive no. 77/91/EEC of 13 December 1976 on coordination of safeguards, companies are required by Member States<sup>3</sup> ;

- Council Directive no. 78/855/EEC of 9 October 1978 concerning mergers of the joint stock companies<sup>4</sup> ;

- Council Directive no. 82/891/EEC of 17 December 1982 concerning the division of the joint stock companies<sup>5</sup> ;

- Council Directive no. 89/666/EEC of 21 December 1989 concerning disclosure of branches opened in a Member State by certain types of company governed by the law

<sup>2</sup> Council Directive no. 68/151/EEC of 9 March 1968 on coordination of safeguards, companies are required by Member States published in Official Journal of the European Union No. L65, 1968, p. 8-12.

<sup>3</sup> Council Directive no. 77/91/EEC of 13 December 1976 on coordination of safeguards, companies are required by Member States was published in Official Journal of the European Union No. L26, 1977, p. 1-13.

<sup>4</sup> Council Directive no. 78/855/EEC of 9 October 1978 concerning mergers of the joint stock companies was published in Official Journal of the European Union No L295, 1978, p. 36.

<sup>5</sup> Council Directive no. 82/891/EEC of 17 December 1982 concerning the division of the joint stock companies was published in Official Journal of the European Union No. L378, 1982, p. 47-54.

of another State<sup>6</sup> ;

- Council Directive no. 89/667/EEC of 21 December 1982 concerning companies with sole partner<sup>7</sup> ;

- Principles of Corporate Governance adopted by the Organization for Economic Cooperation and Development in 1999, amended in 2004.

## I. The Unitary System

### A. Appointment of the Administrators

The joint stock company is managed by one or more administrators, their number is always odd. When there are multiple administrators, they constitute an Administrative Board. The joint stock companies whose financial statements are subject to a legal obligation audit are administered at least 3 administrators.

The administrators are appointed by the ordinary general meeting of shareholders, except the first administrators who are appointed by the constitutive act. Candidates for the position of administrator are nominated by current members of the Administrative Board or the shareholders.

While performing the mandate, the administrators may conclude an employment contract with the company. If the administrators have been appointed among the

<sup>6</sup> Council Directive no. 89/666/EEC of 21 December 1989 concerning disclosure of branches opened in a Member State by certain types of company governed by the law of another State was published in Official Journal of the European Union no. L395, 1989, p. 36-39.

<sup>7</sup> Council Directive no. 89/667/EEC of 21 December 1982 concerning companies with sole partner was published in Official Journal of the European Union No. L395, 1989, p. 40-42.

company's employees, the individual employment contract is suspended during the mandate.

The administrators can be revoked at any time by the ordinary general meeting of shareholders. If the dismissal is unjust, the administrator is entitled to payment of damages.

In case of vacancy of one or more administrator posts if the the constitutive act does not provide otherwise, the the Administrative Board shall appoint interim administrators until the ordinary general meeting of shareholders.

If the administrators do not fulfill their obligation to convene a general meeting, any interested party may appeal to designate the person responsible for convening the ordinary general meeting of shareholders to make the necessary appointments.

In case of death or physical impossibility to exercise the function of Sole Administrator, the temporary appointment shall be made by the censors, but the ordinary general meeting will be convened urgently to final appointment of the administrator.

By the constitutive act or by decision of the general meeting of shareholders may provide that one or more members of the board should be independent.

When appointing an independent administrator, the general meeting of shareholders will consider the following criteria:

a) no director of the company or of a company controlled by it and have not fulfilled this function in the past five years;

b) not be an employee of the company or of a company controlled by it or have had such an employment relationship in the past five years;

c) not to receive or be received by the

company or by a company controlled by the additional remuneration or other benefits, other than those corresponding to his status as non-executive director;

d) not significant shareholder of the company;

e) not have or have had in the last year business relationship with the company or with a company controlled by it, either personally or as a partner, shareholder, director, officer or employee of a company that has such a relationship with the company, if, by their substantial, they are likely to affect the objectivity;

f) not be or have been in the last three years auditor or employee associated with the current auditor of the company or of a company controlled by it;

g) to be director in another company in which a director of the company's non-executive director;

h) was not the company's non-executive director for more than 3 terms;

i) have no family relationship with a person in one of the categories mentioned above. a) and d).

The Administrative Board elects from its members a Chairman of the Board. The constitutive act may stipulate that the chairman is appointed by the general meeting of shareholders appoints the Board.

The chairman is appointed for a term not exceeding its mandate administrator. He may be revoked at any time by the Board. If the chairman was appointed by the general meeting of shareholders will be revoked only by it.

The chairman coordinates the Board and reports on the the general meeting of shareholders. He shall ensure proper functioning of the organs of the company.

If the chairman is temporarily unable to exercise his duties, during a state of impossibility the respective Administrative Board may instruct another administrator serving as president.

The Administrative Board may create advisory committees composed of at least two members of the Board and responsible for conducting investigations and making recommendations to the Board in areas such as audit, remuneration of directors, managers, auditors and staff and nomination of candidates for various posts management. Committees will be referred to the Board regular reports on their activities.

#### **B. The Activity of the Administrative Board**

The Administrative Board shall meet at least once every three months.

The Chairman shall convene the Board, sets the agenda, ensure adequate information on board members about items on the agenda and chair the meeting.

The Administrative Board is also called upon reasoned request of at least two of its members or the Director General. In this case, the agenda is set by the authors of the request. The President must act on such a request.

Convening of the meeting of the Board will be sent to of administrators sufficiently in advance of the meeting date, time may be established by decision of the Board. The convocation shall contain the date, the place will keep meeting and agenda. On items not listed on agenda decisions can be made only in cases of emergency. The constitutive act may impose more stringent conditions on the issues covered in this paragraph.

Each meeting will prepare a report, which will include the names of participants, the order of deliberations, decisions taken, the number of votes received separate opinions. The minutes shall be signed by the Chairman and by at least one other administrator.

The directors and auditors may be called at any meeting of the Board of Directors meeting at which they are required to attend. They have no right to vote, excluding directors who are also directors.

The Administrative Board is responsible for performance of all acts necessary and appropriate to achieve the objects of the company, except those reserved by law for the general meeting of shareholders.

The Administrative Board has the following basic competencies that can not be delegated to:

- a) determining the main directions of activity and the development of society;
- b) establish accounting policies and financial control systems and financial planning approval;
- c) appointment and removal of directors and determine their remuneration;
- d) supervision of directors;
- e) preparation of the annual general shareholders meeting organization and implementation of its decisions;
- f) the request for the opening of insolvency proceedings the company, according to Law. 85/2006 on insolvency proceedings.

#### **C. The Directors**

The Administrative Board may delegate the management company of one or more directors, appointing one of their CEO.

The directors may be appointed by among administrators or outside the board.

If by the constitutive act or by a resolution of the general meeting of shareholders provided that, chairman of the board of a company may be appointed CEO.

The directors are responsible for taking all measures related to the management company within the scope of the company and with the exclusive powers reserved by law or the constitutive act board and the general meeting of shareholders.

The organization of the work of directors may be fixed by the memorandum or by decision of the Board.

Any administrator can request information on directors' management of the company. The directors will inform the Board, regularly and comprehensively on the operations undertaken and those involved.

The directors may be removed at any time by the Board. If the revocation occurs unjust the director concerned is entitled to payment of damages.

#### **D. Representing the Company**

The Administrative Board represents the company in relation to third parties and in court. In the absence of a stipulation to the contrary in the the constitutive act, the Administrative Board represents the company by its Chairman.

By the constitutive act, chairman and one or more directors may be authorized to represent the company acting jointly or separately. Such a clause is enforceable against third parties.

By unanimous agreement, the administrators, who represents the company only by acting together, can empower one of them to enter into certain transactions or types of transactions.

If the Administrative Board delegates management powers to directors, the power to represent the company belongs to the CEO. The Administrative Board, however, retains the duty of representing the company's relationships with the directors.

The Administrative Board recorded in the Trade Registry, the persons authorized to represent the company, indicating whether they act together or separately. They submitted to the Trade Registry specimen signatures.

The Board members will hold office with prudence and diligence of a good administrator. Business decision is any decision to take or not to take some action on the management of the company.

The Board members shall sit in their loyalty in the interest of society. The Board members shall not disclose confidential information and trade secrets of the society to which they have access in their capacity as administrator. This obligation remains even after leaving mandate.

#### **E. Liability of Directors**

The administrators are responsible for fulfilling all obligations .

The administrators are responsible to the company for damages caused by acts done by directors or staff employed, the damage would not have occurred if they had exercised their duties of supervision imposed .

The directors will notify the Board of any irregularities found during their duties. The administrators are jointly and severally liable with their immediate predecessors if, being aware of the irregularities committed by them, they do not communicate to auditors.

## F. The Conflict of Interests

The administrator who has a certain operation, directly or indirectly, interests contrary to the interests the company must give notice to the other administrators and the auditors or internal auditors and to refrain from part in any deliberation regarding this operation.

The administrator has the same obligation if, in a certain operation, known to be interested his/her husband or wife, relative or their affinity to the fourth degree inclusive.

If the provisions of the constitutive act do not provide otherwise, the prohibition on participation in deliberation and voting of administrators shall not apply where the vote is to:

a) offer for subscription by an administrator, the stock or debt securities of the company;

b) the provision by the administrator of a loan or a guarantee to the company.

It is prohibited lending by the company to its of administrators, through operations such as:

a) loans administrators;

b) financial incentives for of administrators during or after the conclusion of the company with their operations supplies, services or execution of works;

c) ensuring directly or indirectly, in whole or in part, of any loans granted to administrators, concomitant or after the loan;

d) direct or indirect guarantee, in whole or in part, of the execution by any other administrators of their personal obligations to third parties;

e) acquisition consideration or payment, in whole or in part, of a claim that has as a loan granted by a third party of administrators or other personal service them.

## II. The Dualist Sytem

The constitutive act may stipulate that the joint stock company is managed by a Directorate and a Supervisory Board. The constitutive act may be amended by decision of the company's existence extraordinary general meeting of shareholders, the introduction or elimination of such provisions.

### A. The Directorate

The company management belongs exclusively to the Directorate which fulfills the necessary and appropriate acts to achieve the object of activity of the company, except those reserved by law for the supervisory board and the general meeting of shareholders.

The Directorate shall exercise the powers of the supervisory control. The Directorate composed of one or more members, their number always odd. When one member, it is called single CEO. The appointment of members of the the Directorate is the responsibility of Supervisory Board, which also assigns one of them chairman of the Directorate.

The members of the Directorate may be revoked at any time by the Supervisory Board. The constitutive act may provide that they can be removed and the ordinary general meeting of shareholders. If their dismissal unjust arises, the members of the Directorate are entitled to the payment of damages.

In case of vacancy of the post of the member of the Directorate Board, The Supervisory Board shall proceed without delay to appoint a new member.

The Directorate represents the company in relation to third parties and in court.

In the absence of a stipulation to the contrary in the the constitutive act, the

members of the Directorate represents society working only together.

In case the members of the Directorate acting only together, by unanimous agreement, they they can empower one of them to enter certain transactions or types of transactions.

The Supervisory Board represents the company in its relations with the Directorate.

The Directorate recorders in the Trade Registry its members names, indicating whether they act together or separately. They will be submitted the specimen signatures to the Trade Registry.

At least every three months, the Directorate submits a written report to the Supervisory Board on the company management, on its activity and its possible evolution.

The Supervisory Board may require the Directorate any information it deems necessary to exercise its control and may conduct proper investigations.

The Directorate shall submit to the Supervisory Board the annual accounts and its annual report immediately after their preparation. Furthermore, the Directorate shall submit a detailed proposal on the distribution of profits resulting from the balance of the financial year.

### **B. The Supervisory Board**

The members of the Supervisory Board shall be appointed by the general meeting of shareholders, except the first members, who are appointed by the constitutive act.

The candidates for the member position are nominated by existing members of the Board or the shareholders.

The number of members of the Supervisory Board is determined by the

constitutive act. It may not be less than 3 nor more than 11.

The Supervisory Board members may be revoked at any general meeting of shareholders by a majority of at least two thirds of the votes of shareholders present.

The Supervisory Board elects from its members a chairman of the Board.

In case of vacancy of a member's seat on the Supervisory Board, the Board may proceed to appoint an interim member until the general meeting.

If the Directorate does not fulfill its obligation to convene a general meeting, any interested party may appeal to designate the person responsible for convening ordinary general meeting of shareholders to make the necessary appointments.

The Supervisory Board members may not be members of the Directorate. They also can not serve as an employee of the company.

By the constitutive act or by decision of the general meeting of shareholders it may establish specific conditions of professionalism and independence for the supervisory board members.

The Supervisory Board has the following main tasks:

a) exercise permanent control over the management of the company by the directorate;

b) appoint and dismiss members of the Executive Board;

c) verify compliance with the law, the the constitutive act and the decisions of the general meeting of the company's management operations;

d) report at least once a year the general meeting of shareholders on surveillance activities.

In exceptional cases where the interests of society requires the Supervisory



Board may convene a general meeting of shareholders.

The Supervisory Board can not company's management responsibilities. However, the constitutive act may provide that certain operations can not be performed without the consent of the Supervisory Board. If the Supervisory Board does not agree for the such an operation, the Directorate may require the consent of ordinary general meeting. The ordinary general meeting decision on such an agreement is given by a majority of three fourths of the votes of shareholders present. The constitutive act does not can establish another majority, or stipulate other conditions.

The Supervisory Board create advisory committees consisting of at least two members of the Board and responsible for conducting investigations and making recommendations to the Board in areas such as audit, remuneration of the Directorate and the Supervisory Board and staff, or the candidate nominations for the various positions. The committees will submit to the Supervisory Board regular reports on their activities.

The chairman of the Directorate may be appointed member of the nominating committee created by the Supervisory Board.

The Supervisory Board meets at least once every three months. The chairman shall convene and chair the Supervisory Board meeting.

The Supervisory Board shall be convened at any time at the request of least two members of Board or at the request among

the directorate. The Supervisory Board shall meet within 15 days of the call.

At each meeting it will be prepared a report, which will include the names of participants, agenda, policy deliberations, decisions taken, the number of votes received separate opinions. The minutes shall be signed by the chairman and by at least one other present Board member.

### Conclusions

The new conception of the management of the joint stock company had in view the materialization principles of corporate governance and ensuring harmonization with EU regulations.

According to the innovations introduced by the company management actions are carried out either by the Administrative Board and directores - the unitary system - by the Directorate and the Supervisory Board - the dual system.

The corporate governance involves not only a business concept but also has many implications for economic, social and political areas.

Implementing an effective system of corporate governance should lead to transparency and efficiency of markets, be consistent with the rule of law and clearly defined distribution of responsibilities among the competent courts in matters of survey, regulation and enforcement activities. Also, a corporate governance regime should protect and facilitate the exercise of shareholders' rights and ensure fair treatment of all shareholders, including minority and foreign shareholders.

## REFERENCES:

1. **Guyon, Y.**, *Droit des affaires*, tome 1, 12e édition, Ed. Economica, Paris, (2003) 275
2. **Mestre, J., Pancrazi, M.**, *Droit commercial. Droit interne et aspects de droit international*, 27e édition, Ed. L.G.D.J., Paris, (2006) 346
3. **Munteanu, E.**, *The legal regime of administrators in companies*, Ed. All Beck, Bucharest, (2000), 37
4. **Piperea, G.**, *Obligations and liabilities of the administrators of companies. General notions*, Ed. All Beck, Bucharest, (1998) 83
5. **Ripert, G., Roblot, R.**, *Traité de droit commercial*, tome 1, vol. 2, 18e édition, Ed. L.G.D.J., Paris (2002) 2
6. **Șandru, D.**, *Companies in EU*, Ed. Universitară, București, (2006) 57
7. **Turcu, I.**, *Theoretical and practical treaty commercial law*, vol. II, Ed. C.H. Beck. Bucharest, (2008) 364
8. Law no. 31/1990 on companies was originally published in Official Gazette No. 126/17.11.1990. Over time it has undergone many changes and additions. Also, to date, Law no. 31/1990 on companies has been republished twice in the Official Gazette No. 33/29.01.1998, respectively, in the Official No. 1066/17.11.2004. After the second reprint has been modified and supplemented by the following laws: Law no. 302/2005 (OJ no. 953/27.10.2005), Law no. 85/2006 (OJ no. 359/21.04.2006), Law no. 164/2006 (OJ no. 430/18.05.2006), Law no. 441/2006 (OJ no. 955/21.11.2006), Government Emergency Ordinance no. 82/2007 (OJ no. 446/29.06.2007), Government Emergency Ordinance no. 52/2008 (OJ no. 333/30.04.2008), Law no. 284/2008 (OJ no. 778/20.11.2008), Law no. 88/2009 (OJ no. 246/14.04.2009), Government Emergency Ordinance no. 43/2010 (OJ no. 316/13.05.2010), Government Emergency Ordinance no. 54/2010 (OJ no. 421/23.06.2010), Government Emergency Ordinance no. 90/2010 (OJ no. 674/04.10.2010), Law no. 202/2010 (OJ no. 714/26.10.2010), Government Emergency Ordinance no. 37/2011 (OJ no. 285/22.04.2011), Law no. 71/2011 (OJ no. 409/10.06.2011), Government Emergency Ordinance no. 2/2012 (OJ no. 143/02.03.2012), Law no. 76/2012 (OJ no. 365/30.05.2012) - law that changes the name of the Law „on commercial companies” in the Law „on companies”, Government Emergency Ordinance no. 47/2012 (OJ no. 635/06.09.2012).
9. Council Directive no. 68/151/EEC of 9 March 1968 on coordination of safeguards, companies are required by Member States published in Official Journal of the European Union No. L65, 1968, p. 8-12.
10. Council Directive no. 77/91/EEC of 13 December 1976 on coordination of safeguards, companies are required by Member States was published in Official Journal of the European Union No. L26, 1977, p. 1-13.
11. Council Directive no. 78/855/EEC of 9 October 1978 concerning mergers of the joint stock companies was published in Official Journal of the European Union No L295, 1978, p. 36.
12. Council Directive no. 82/891/EEC of 17 December 1982 concerning the division of the joint stock companies was published in Official Journal of the European Union No. L378, 1982, p. 47-54.
13. Council Directive no. 89/666/EEC of 21 December 1989 concerning disclosure of branches opened in a Member State by certain types of company governed by the law of another State was published in Official Journal of the European Union no. L395, 1989, p. 36-39.