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ATTORNEYS AT LAW

CORINA DINU   MIHAELA VRANY

PRESENTATION OF THE COMPANY

We are a dynamic and flexible law company whose ambition is to safeguard the manifold legal interests of our clients, and to pursue them all along to the best possible solution.

Our partners are young though experienced lawyers with extensive knowledge of the local legal system, and therefore capable of an insight into its intricacies at almost any level. That is especially beneficial to our foreign clients whom we endeavor to assist and provide with professional counsel.

In addition, other specialized advice is offered in any related matters, such as licensing, import – export regulations, accounting, auditing, finance, banking, securities, aimed at smoothing the operation of our clients' businesses.

Our legal services cover a wide range, from Commercial/Company Law to Litigation, from the drafting of agreements and legal views to standing in Court on behalf of our clients.

Our total commitment and ongoing efforts to improve our work and deepen our awareness of the local laws and regulations have brought among our clients such multinational companies as:

AMERICAN INTERNATIONAL GROUP - A.I.G (U.S.A.), UNITED CAPITAL(U.S), DUTCH OIL FIELD SERVICES B.V. (HOLLAND), GERMANOS (GREECE), SHELL ROMANIA SRL, BANQUE PARIBAS (SUISSE), CARGILL (SUISSE), RENAULT (FRANCE), SHELL GAS (LPG), BROADHURST INVESTMENTS LTD, PHILIP MORRIS ROMANIA S.R.L..

We have developed our special way of handling legal matters primarily pertaining to business law and litigation.

COMMERCIAL/COMPANY

We provide legal advise to various companies having a multifarious scope of business: general trade, manufacturing, leasing, banking and others, relating to all types of transactions aimed at expanding any such business and securing their legal relationships:

- *Establishment and Transformation of Joint Ventures*
- *Increase of Capital*
- *Domestic Licensing*
- *Loan Agreements*
- *Agency and Distributorship Agreements*
- *Labor Issues*
- *Tax Issues*

COMMERCIAL ISSUES

We offer prompt, preventive and cost-effective advise for reaching a best possible as well as proper solution in all the cases of:

- *Commercial Arbitration*
- *Debt Compensation*

- *Partnership Disputes*
- *Breach of Contract*
- *Alternative Dispute Resolution*

PRIVATIZATION

Aside from providing the above legal services to its clients our firm has rendered legal advice to various companies in connection with privatization process.

Thus, our lawyers have been involved in major privatization projects of the oil, gas, chemical, farmaceutics, banking companies.

FOREIGN INVESTMENT

We provide potential foreign investors who are aware of Romania's potential – political stability, friendly business climate, international cross-road location - with further information in connection with the implementation of their business and incentives with reference to:

- *Concessions*
- *Taxation*
- *Social Security*
- *Competition Law*
- *Environment Regulations*
- *Securities*

INSURANCE

We have gained a particular experience in addressing this field. Our company is advising insurers dealing with all types of insurance:

- *Life*
- *Maritime and Transport*
- *Personal Other than Life*

- *Fire and Other Risks*
- *Financial Losses under Insured Risks*
- *Civil Liability*
- *Credits and Guarantees*

LITIGATION

We are dedicated to defending and promoting our clients' interests arising from any domestic or international transaction before any Romanian Court or Arbitration Body, by a variety of methods to envisage the best solution in every particular case.

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CONFIDENTIALITY

Our partners are at all times concerned with improving and extending their legal knowledge but what we praise most of all are the principles of objectivity, fairness, impartiality and confidentiality in the relationships with our clients, both in conduct and as regards the client's privilege. Being faithful to this code of professional ethics is our first directive.

Special attention is given, during and after the period of representation, that any material pertaining to our clients should remain confidential, and no unauthorized person should have access to any such document or information.

RETAINER/HOURLY FEE

Our services are provided either on the basis of an annual retainer agreement or of an hourly fee. Our billing policy is subject to mutual agreement with the client.

Additionally incurred expenses are to be charged on an actual cost basis.

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Directors, Officers and Managers Liability
The Legal Position in Romania

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General Overview

The administrator (managing body) is the main permanent operational executive, the most dynamic element of the organization structure of the commercial company.

Even if the social will of the company is initiated within the General Assembly of Shareholders or Associates, the application and practical aspects of this social will is the duty of the administrator or other managing body of the company. Thus the powers of the General Assembly are extremely wide, their role is rather of approval, disapproval and supervision of the administrator's activity while the Administrator has the initiative, capacity and necessary mobility to apply the social will by currently operating the company's object of activity.

Therefore, the administrators are entitled to act in the name of the company, being able to bring benefit or to prejudice the company or third parties.

Taking into account the importance of the administrator's or managing body's actions – as representatives of the company's social will – the legal frame of their obligations and liabilities is carefully set forth by applicable laws. Consequently, the administrator or the managing body is liable (civil, penal or infringement liability) for all legal acts accomplished during office.

The provisions of the Commercial Companies' Law and the specific regulations of the Civil and Commercial Code referring to the mandate, define the legal statute of the management body of the commercial companies.

It is essential that the entire issue regarding the liabilities, rights and obligations of the management body is based on the mandate theory, enlarged by specific regulations regarding this specific case.

We should define the legal position of the management body deriving from an explanation of the terms: director, manager and employee, considering the Romanian laws, which divide the liability for the management and administration of a commercial company between the above mentioned managing authorities, or just keeps the liability for the administrator.

In order to proceed with an analysis of the juridical statute of this managing body, we should first observe the types of commercial companies defined by the Romanian Law.

Law 31/1990 regarding the commercial companies amended and completed by the Emergency Ordinance no. 32/1997, provides the types and forms of organization of companies.

According to art. 2 of Law 31/1990, the commercial companies may have one of the following juridical forms:

- **a)** **Ordinary Partnership**, the social obligations are guaranteed by the capital as well as by the unlimited joint liability of all partners;
- **b)** **Limited Partnership**, the social obligations are guaranteed by the capital and by the unlimited joint liability of all partners, which are liable only up to the value of their interest;
- **c)** **Joint-stock Company** the social obligations are guaranteed by the capital and by all shareholders (at least five), which are liable only up to the value of their interest;
- **d)** **Limited Partnership by Shares,** the social obligations are guaranteed by the capital and by the unlimited joint liability of all partners, which are liable only up to the value of their interest;
- **e)** **Limited Liability Company** the social obligations are guaranteed by the capital, and the associates are liable up to the value of their interest.

The basic criteria for the differences between these types of companies is the partners' liability towards third parties regarding the obligations of the commercial company, therefore there are unlimited liability companies (a, b, d) and limited liability companies (c, e).

Moreover, the commercial companies are divided into two categories:

1. Partnerships, including: the Ordinary Partnerships and the Limited liability company;
2. Capital Companies, including: the Joint-Stock Companies, the Limited Partnership by Shares and the Limited Liability Companies.

Taking into account that from 1990 and up to present, the most common types of companies within the Romanian economy have been the Joint-stock Companies and the Limited liability companies, we deem important to make reference to the express legal provisions regarding the liability of the administrators (managing body) of these two types of companies.

The analysis of this issue implies a brief survey on the following aspects:

- The definition of the managing body in view of the Romanian law (1);
- The legal nature of the managing body liability (2);
- Types of liability and the contents of this liability (3);
- Further on, we shall present the legal means of insuring the interest's protection of the shareholders, administrators, third parties, creditors, etc, by means of justice (5), as well as the specific issues regarding the time bar of the different types of actions (6).
- Concluding, we shall present the applicability of foreign judgments in Romania (7) as well as the evolution of legal provisions regarding the shareholders (8) and a short overview of the regulating authorities of the capital market and labor (9,10).

1. THE MANAGING BODY OF COMMERCIAL COMPANIES

As legal body, the commercial company has its own objective, separate from the one of the associates or shareholders. This objective is formed within the deliberation body, which is the General Assembly of the Associates or of the Shareholders, and this objective is fulfilled by the legal deeds of the executive body: the Administrator, the Board of Administration, the Board of Directors, and the Executive Directors. This body is the correspondent of the terms “officer”, “director” and “manager” from the western law.

1.1. The Administrator is the main permanent managing body of the commercial company. The Administrator can be a legal or a natural person, having or not the quality of associate, who – according to the mandate and the legal provisions – follows the accomplishment of the object of the company.

In case the Administrator is a legal person, a permanent representative – natural person – must be appointed, in compliance with the general conditions established by law for the natural person Administrator.

In accordance with Law 31/1990 and Urgency Ordinance no. 32/1997, the natural person appointed as Administrator should comply with the following conditions:

1) Capacity. The natural person appointed Administrator should have full exercise capacity (after 18 years old). The penalty for the lack of capacity is the loss of the administrator position (art. 135 of Law 31/1990), and all the acts of the company are null.

2) Respectability. The natural person appointed administrator should have an untainted moral conduct. According to art. 6 and art. 135 of Law 31/1990, the persons that were convicted for fraudulent administration, breach of trust, forgery, embezzlement, perjury, and bribery and for other crimes set forth under the company law cannot be appointed administrator.

3) Citizenship. The administrator can be a Romanian or a foreign citizen, should the law or the setting up documents not provide any interdictions. Thus, the law provides that in the case of joint-stock companies or limited partnership by shares, the sole administrator or president of the Board of Administration and at least half of the number of administrators should be Romanian citizens, in case it is not provided otherwise in the setting up documents (art. 134 of Law 31/1990).

4) Capacity of Partner. Law 31/1990 differently sets forth such matter, depending on the legal form of the company. In the joint-stock company and the limited liability company, the capacity of administrator is not conditioned by that of shareholder or associate.

5) Limitation of Plurality of Offices. The company law 31/1990 comprises express provisions only in case of joint-stock companies. According to art. 142 of law 31/1990, a person cannot hold a position in more than three Boards of Administration in the same time. This interdiction does not apply when a person appointed in the Board of Administration is owner of at least a quarter of stock or is administrator of a company holding such quarter. In case of Limited liability companies the plurality of offices is legal, upon authorization from the Associates' Assembly.

1.2. **The Board of Administration**

According to Law 31/1990, in case of joint-stock companies, when more than one person is appointed administrator, they form a Board of Administration.

The Board of Administration is a collegial body, managed by a president chosen by the administrators who form the Board of Administrators. The president of the Board of Administration can be the general director or the director of the company (art. 140 of law 31/1990).

The administrators that form the Board should fulfill the conditions provided by law for the position of administrator.

1.3. **The Board of Directors**

is a restricted collegial body, to which a part of the powers of the Administration Board have been delegated, formed by the members chosen from the administrators. The delegation of power from the Board of Administration to the Board of Directors is optional. The Board of Directors is managed by the general director or by the director of the company.

The administrators from the Board of Directors must fulfill the conditions provided by law for the quality of administrator. In addition to these general conditions, art. 142 align. 5 from Law 31/1990 sets forth that the administrators in the Board of Directors cannot hold the position of administrator, member in the Board of Directors, auditor or unlimited liability associates in other competitor or with the same object of activity companies, and cannot make any deeds of commerce, in their own name or in the name of a third party, without the authorization of the Board of Administration.

1.4. **The Executive Directors**

are employees of the company, appointed by the Board of Administration (art. 141 of Law 31/1990). The Executive Directors are specialized employees, with power of decision, such as: chief accountant, technical director, sales director, etc. they cannot be members of the Board of Administration or of the Board of Directors. The relations between the Executive Directors and the Company are set forth in the Labor Agreement.

2. THE MANAGING BODY LIABILITY

2.1. The Legal Nature of the Managing Body' Liability

a) The legal nature of the Administrators' Liability

The juridical relations between the commercial company and the Administrator have a double nature: one based on the mandate contract and a legal one. According to the provisions of art. 72 of Law 31/1990, the liability and the obligations of the Administrator are set forth by the regulations related to the mandate contract and by the ones expressly provided in the above-mentioned law.

Taking into consideration the double juridical nature of the relations between the Company and the Administrator, the liability of the Administrator shall be based on the contract – in case of breach of the obligations deriving from the Act of Incorporation – and aquilian or penal – in case of breach of the obligations deriving from the law.

b) The Executive Directors' Liability Legal Nature

The Labor Code provides a contractual or aquilian or penal liability for the executive directors employed on basis of a labor agreement, and not a disciplinary or material liability.

2.2. **The legal liability of the administrators** of the company can have the following forms:

a) Civil liability;
b) Infringement Liability;
c) Penal Liability.

a) The Administrator's Civil Liability

Towards the Company

The administrators are liable towards the company for the breach of obligations provided in the mandate contract, established in the Act of Incorporation or by the Associates' Assembly, as well as provided by law.

In case the company has a sole administrator, the liability shall be individual.

In case of plurality of administrators, members of certain body, art. 73 of Law 31/1990 provides a joint liability for breach of obligations regarding: the reality of payments made by partners, real existence of paid dividends, existence of registers required by law and their accuracy, fulfillment of the General Assembly decisions, fulfillment of the obligations established in the setting up documents and by the law.

The Administrators do not share a joint liability in case only part of the administrators has voted for the decision in breach of the setting up documents or the law. The administrators that have voted against the above-mentioned decision and the ones that abstained shall not be liable, provided that their position has been noted and they informed in writing the auditors. The note regarding the vote against or the abstaining shall be registered in the Administration Board Decisions Register (art. 144 align. 5 of Law 31/1990).

Moreover, the administrators shall not be jointly liable in case an administrator was absent in the moment of voting. In order not to enforce the liability of the absent administrator, his opposition must be notified.

The administrators are jointly liable with their immediate predecessors in case they fail to notify the auditors regarding the predecessors' wrongful deeds they are aware of.

Besides the normal liability for the personal deeds, the administrators are liable for the wrongful acts of other persons. The administrators' liability is extended to the deeds of the directors or the employees, in case the damage would not have occurred if they would have supervised the staff according to their job description. In order to be exonerated of this liability, the administrators have to prove the fact that the fault belongs entirely to the personnel, and they have done all reasonably possible in order to avoid the wrongful deeds. (art. 144 of Law 31/1990).

The liability towards third parties

The direct liability of the administrators towards third parties is an exception to the legal person's liability for its own acts and deeds. The direct liability of the administrator towards third parties can be triggered in the following situations:

- the juridical act damaging for the third party has been drawn up by the administrator in breach of the limits established by the mandate contract, and is personally liable to third parties;
- the juridical deed damaging for the third party has been done by the administrator outside the limits of his position, and he is exclusively liable;
- the administrator is the surety or the referee in case of need of the company, he shall have a joint liability with the company;
- in case of bankruptcy the administrator shall be personally liable to the creditors of the company in case the amount of the liabilities of the company is not sufficient, due to negligence of the administrator;

In addition to the above-mentioned forms of liability, the commercial law provides a special liability in case of bankruptcy. This specific aggravated form of liability is deriving ex contractui or ex delicto.

Art. 124 align. 1 letters a-g sets forth the possibility of the Court to oblige the managing body to support part of the liabilities of the company, for certain specific deeds.

b) The infringement liability of the administrators

The company, as legal person, cannot be liable for infringements in its own name, unless expressly provided by law (art. 5 align. 3 of Law 31/1990).

Consequently, in case the law does not provide an infringement liability of the company, the administrators are liable.

Moreover, the administrator is directly and personally liable for the infringements in breach of the duties of his position.

In some cases, the liability can belong to the company as well as to the administrator, but it is not a joint liability.

The infringement liability of the members of the managing body is not joint, and it has to be individualized according to the fault of each person.

In case the company is subject to an infringement sanction, it is entitled to legal action against the damaging administrators, in order to recover the amounts paid on account of their fault. Provided the company has been subject to other damages in addition to the amount of the penalty established by the infringement sanction, such as: withdrawal of the functioning authorization, closing or obstruction of the accounts, etc, the company is entitled to legal action for the recovery of the damages against the liable administrators.

Provided the damage to a third party occurs, the infringement liability is cumulated with the civil liability.

c) The penal Liability of the Administrators

According to the provisions of Law 31/1990 and other regulations, certain deeds of the administrators are incriminated and punished as offences.

The administrator is personally liable in this situation, and if there is more than one administrator, the penal sanctions are applicable only to the ones that perpetrated the offence.

The penal consequences are applicable only to the administrators, and cannot extend to the company, but the patrimonial consequences can involve the company.

In case the administrator's offence generates damages, towards the company or third parties, the penal liability shall cumulate with the civil one.

The civil liability of the administrator is completed by the company's civil liability in guarantee, in case the victim of the damage is a third party.

The law provides a penal liability of the administrator of the company in bankruptcy in case of the deeds provided by the bankruptcy law, when these actions or omissions are provided by the Penal Code or by special laws as offences against the law.

The right of penal action against the administrators and the executive directors does not belong to the General Assembly or to the Associates. It is to be introduced by the General Prosecutor on basis of the provisions of the Penal Procedure Code.

The administrator is fulfilling its duty through an ensemble of obligations related to the management, operation and administration of the company and the fulfillment of the associates' will and of the object of activity of the company.

3. The Administrators' Obligations

The main obligations of the administrators are set forth by Law 31/1990 as well as other laws and regulations, and can be split in the following categories:

- the obligations of the administrator upon setting up of the company;
- the obligations of the administrator during the functioning of the company;
- the obligations of the administrator in case of bankruptcy;

We shall further analyze the different types of obligations of the administrators.

3.1. The Administrator's duties to the company

The obligations prior to the setting up of the company

- the duty to require the registration with the Registry of Commerce, within a 15 days term from the authentication of the Setting Up documents (art. 35 of Law 31/1990);
- the duty to take over the setting up documents and correspondence from the founders (art. 39 of Law 31/1990);
- the obligation to deposit a money guarantee, this guarantee is provided by law in case of joint-stock companies and the limited partnership by shares. The amount of the guarantee cannot be lower than the nominal value of 10 shares or the double of the monthly remuneration of the administrator. In case the administrator is also a share-holder, the guarantee can be formed by the deposit of ten shares at the disposition of the company, inalienable for the entire period of the mandate. The penalty for unfulfilling this obligation is considering the administrator as resigned. (art. 137 align. 4 of Law 31/1990).
- The obligation to submit their signatures with the Registry of Commerce in case they are appointed representatives of the company. The penalty for failure of this obligation is the civil fee provided by art. 44 of Law 26/1990.

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The obligation of administration of the current activity of the company

- the obligation to manage the company. In this respect, the administrators have the duty to fulfill the object of activity of the company;
- the obligation to attend all Associates' General Meetings, the Boards of Administration and the similar managing body (art. 70 align. 2 of Law 31/1990);
- the obligation to accurately accomplish the decisions of the General Assembly (art. 73 letter D of Law 31/1990);
- the obligation to follow up the reality of due payments by the associates and – in case of public subscription - the obligation to be jointly liable with the founder members for the complete payment of the share capital and of the due payments established by law or setting up documents (art. 30);
- the obligation to draw up the balance sheet and the account of profit and losses of the company, as well as to ensure the observance of law when distributing the benefits and paying the dividends;
- the obligation to restrain from certain deeds and operations provided by law. According to art. 145 of Law 31/1990 the administrator who in a certain matter has interests opposite to the ones of the company has to inform the other administrators, and not attend any deliberation with respect to the contrary interests operation. This obligation is applicable in case the contrary interest belongs to the wife and relatives until the 4th grade. In case of breach of this obligation, the administrator shall be liable for the damages to the company;
- the obligation to accomplish any duties provided by law or by the setting up documents.

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3.2. The administrator's obligations towards the minority and majority shareholders

With respect to the administrator's obligations towards the shareholders, the company law does not distinguish between the minority and the majority shareholders.

The administrator has the obligation to **inform all associates or shareholders regarding the activity of the company.** This obligation is provided by art. 173 of Law 31/1990 regarding the joint-stock companies. Upon request of the shareholders and on their expense, the administrators shall issue extracts from the shares and shareholders registry and from the General Assembly decisions and deliberation Registry. Furthermore, on basis of this obligation, the administrators of the joint-stock companies shall present to the auditors, a month prior to the General Assembly, the last accountancy balance, with the benefits and losses account, for the report to be presented to the General Assembly.

3.3. The Administrators' obligations in bankruptcy

During bankruptcy and judicial liquidation proceedings, the obligations of the administrators shall be extremely restricted, until complete disappearance upon management taking over by the auditors.

The obligations of the administrator in bankruptcy and judicial liquidation are:

1. The Administrator shall have the duty to continue the mandate until entering into function of the liquidators (art. 246 align. 1 letter "a" of Law 31/1990). The mandate of the administrator shall be restricted in this situation, and he shall cease to make any new commercial operations and only follow up on the pending operations.

2. The administrators have the obligation to prepare the administration in order to be taken over by the liquidators. According to art. 247 align. 3 of Law 31/1990, upon taking over of the office by the liquidators, the administrators shall make an inventory together with the liquidators and shall draw up a balance of the real administration of the company.
3. The administrators shall turn over the administration of the company to the liquidators on basis of the inventory and the balance sheet drawn up with the liquidators, as well as all the registries and documents referring to the activity of the company.

3.4. The obligations of the Administrators in case of breach of tax, environment and labor regulations:

The company has the right to take the administrator in justice in case of damages due to administrator's breach of fiscal and environment duties, in order to recover the losses incurred. The patrimonial sanctions, (such as delay penalties, penalties, etc) are to be paid by the company and then recovered from the administrator in breach of legal provisions.

The recovery of the loss from the administrator can be willingly or – in case the administrator refuses – by legal action or forced execution.

The administrators and the directors are able to prejudice third parties, such as shareholders, employees, financial creditors, etc as a result of non-fulfillment of performance required of their position. In order to provide coverage for this type of possible damages, the administrators and directors can have a civil liability insurance policy.

The Romanian Insurance Law does not clearly provide with respect to the administrators' insurance and the doctrine is applying the provisions of Law 66/1993 regarding the management contract and of the Insurance Classes Norms.

This insurance is optional and the administrator's company pays the insurance premium. The insurance company should be Romanian, and in case the local insurance companies do not issue such policies it can be a foreign insurance company.

The insurances of transnational companies with activity in several countries are valid in Romania according to the provisions regarding the territorial limit of liability. Provided that the policy has no specification of a certain territory limit of liability, they are valid in Romania.

As with respect to the payment of the insurance premiums of the policies drawn up abroad and paid in Romania by the representatives or branches of the respective insurance companies, the amounts are subject to Romanian taxes on profit, being considered as incomes.

4. THE EXISTENCE OF AN EQUIVALENT OF THE US BUSINESS JUDGMENT RULE

The Romanian Law provides in a similar way to the US Business Judgment Rule, with respect to the administrator's liability, except the fact that there is no specific express Rule but several provisions regarding the commercial mandate contract.

In consideration of the fact that the legal reports between the company and the administrators are based on the commercial mandate, the main duty of the administrator is to execute the mandate, respectively to manage the company. The management of the company involves the execution of several legal deeds, though it is not compulsory to complete the projected deed. In case the administrator, with all diligence, cannot complete the projected deeds or in case the result is not as expected, the administrator is not considered liable.

Taking into account the onerous character of the administrator's mandate, the diligence shall be appreciated in abstracto, according to the abstract prudence of bonus. Likewise, he should accomplish the duties of the position in good faith and with the diligence of a *good owner*.

5. WHO CAN SUE:

We shall analyze further on the specific protection measures of the company, shareholders, creditors and third parties interest, by means of legal actions, the conditions to institute legal action and the time bar of the right to action.

5.1. The company

As a result of the legal personality, the right to act in justice belongs to the company and not to the shareholders. The administrator or the Board of Administration promotes the action, according to the powers provided by the setting up documents.

The shareholders do not have the right to action in justice in the name of the company according to the Romanian Law, as per the provisions of art. 23.1. of the US Civil Procedure Code (derivative actions).

Moreover, the company is entitled to call to Court the members of the management body, in case of prejudice. The legal action against the administrators or the executive belongs to the company and not to the shareholders, in accordance with the provisions of art. 150 of Law 31/1990. The General Assembly shall decide to institute proceedings against the founder members, the administrators, the auditors or the directors, within the quorum and majority provided by law. The administrator shall be replaced, should the General Assembly decide to sue, and his mandate shall rightfully cease, whereas the directors shall be suspended from office until the court sentence is final. The General Assembly shall also appoint the person to institute the proceedings.

5.2. The shareholders

The interests of the minority shareholders are not expressly protected according to the law.

The shareholders are entitled to oppose the registration with the Registry of Commerce, respectively the decisions of the General Assembly in breach of the law or the setting up documents.

In addition, the shareholders have the right to institute proceedings against the administrators or the directors - in case the company does not sue - in case of prejudice brought to the company (art. 152 of Law 31/1990). This action belongs to the company, taking into account the fact that the protected interest is of the company.

In case the shareholder is personally prejudiced by the administrator's deed, he is entitled to intent civil proceedings against the administrator, as a third party – subject to the legal provisions regarding the infringement liability action of a third party against the administrator.

The above-mentioned proceedings to be instituted by the shareholders against the administrator are direct and personal actions.

As far as the class actions are concerned, the Romanian law provides regarding the co-participation in action, provided the object of the litigation is a common right or obligation, or the rights and obligations of the parties have the same cause (art. 47 of the Civil Procedure Code). It is compulsory for the proceedings to be instituted in the name of all shareholders or by a person with mandate to represent in court, from all shareholders in question.

5.3. The creditors

The company's creditors are entitled to institute proceedings against the administrator only in case of legal reorganization or legal liquidation, according to Law 64/1995.

The liability proceedings against the administrator can belong to the creditors, and are to be instituted by the assignee in bankruptcy. The creditors are also entitled to oppose the General Assembly decisions to reduce the shares capital of the company, when this damages the creditor as the debt cannot be covered as a result of the reduction of the share capital (art. 203 of Law 31/1990). This opposition has to be introduced in a 2 months term from the publication date of the decision or the Act of Incorporation in the Official Gazette.

5.4. The third parties

The liability of the administrators towards third parties is exceptional, and the right to institute proceedings against the administrator can benefit to third parties only in exceptional case, such as:

- exceeding the mandate, involving a civil contractual liability action;
- lawful or wrongful legal deeds outside the margins of the office, involving a liability for damages due to misfeasance;
- provided the administrator is the fideiussor of the company, involving a liability out of the contract action, based on the caution contract between the administrator and the creditor third party.
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5.5. Administrators in case of bankruptcy or legal administrator of the bankrupt's patrimony

The creditors which hold at least 50% of the debt are entitled to hire a legal administrator, legal or natural person, according to art. 17 of Law 64/1995 regarding the reorganization and legal liquidation procedure.

In case the creditors do not decide to appoint a legal administrator, the assignee in bankruptcy can decide to appoint an administrator.

The legal administrator is not a mandatory of the creditors; he is subordinated to the assignee in bankruptcy.

Whereas the actions against the administrator or the directors are concerned, in case the company is bankrupt, they shall be instituted by the assignee in bankruptcy, by the creditors or by the Chamber of Commerce, according to art. 126 of Law 64/1995. Consequently, the legal administrator cannot institute proceedings against the administrator or the executive directors.

5.6. The employees

A classification of the possible litigations between the employees and the company would be as follows:

- regarding the drawing up, execution, modification, suspension, termination of individual labor agreements;
- regarding the execution of collective labor agreements;
- regarding the payment of compensations for damages due to on execution of the obligations provided by the labor agreements;
- regarding the acknowledgement of annulment of labor agreements or of certain clauses of the labor agreements.

The employees are entitled to address the court in 30 days from the date of acknowledgement, in case of unilateral measures of modification, suspension or cancellation of labor agreement (art. 73 of Law 168/1999).

In case it is proved that the administrator is liable for the abusive measures against employees, the administrator can be introduced in the process, or the company can institute recovery proceedings against the administrator in order to cover the compensations paid to the employee. The compensation for damages can be required from the company in 3 years from the date of the damage (art. 73 letter "d" of Law 168/1999).

With respect to the sexual harassment, the deeds are considered infringements and the punishment is imprisonment from 3 months to 2 years, or fine, according to art. 203 – 1 of the Romanian Penal Code.

6. Capital market regulatory authorities

The base Law of the Romanian capital market is Law 52/1994 regarding the securities and the stock exchange.

The authority invested for supervision and control of this law is the National Commission of Securities (C.N.V.M.), invested with regulatory, decision, authorization, and dispenses, interdiction, investigation and disciplinary or administrative sanctions powers.

C.N.V.M. is the administrative autonomic authority, with legal personality, that regulates and supervises the capital market, the goods markets and the derived financial instruments, as well as the specific operations of the above.

The law sets for the following duties of C.N.V.M.:

- establishes and maintains the legal frame for the development of the market;
- promotes reliability in the regulated markets and in the investments in the financial instruments;
- insures operators' and investors' protection against unfaithful, abusive and fraudulent practices;
- promotes accurate and transparent operation of the regulated markets;
- prevents market manipulation and fraud and insures integrity of regulated markets;
- establishes financial solidity and honest practice standards on the regulated markets;
- insures information and treatment equal statute of the investors and their interests.

C.N.V.M. has 7 members, out of which one president, 2 vice-presidents and 4 officers.

C.N.V.M. can appoint or revoke its powers regarding the control and investigation over the participants on the capital market towards the Control and Investigation Department (D.C.A.), an internal department (art. 2 of Regulation 11/1997 regarding the enforcement of legal provisions regarding securities).

C.N.V.M. or D.C.A. is entitled to decide by Ordinance the investigations, ex officio or upon notification, in case of breach of legal provisions or securities regulations, according to art. 8 of Regulation 11/1997).

D.C.A. has the competency to issue, in the name of C.N.V.M., fine sanctioning ordinances, verbal or written warnings, suspension of authorization, withdrawal of authorization, canceling of authorization, and in the case of infringement, can notify the penal authorities, in case of breach of securities regulations.

The above-mentioned ordinances can be contested with the C.N.V.M. that shall issue a motivated decision in the matter, which can be appealed in 30 days.

Moreover, C.N.V.M. can impose for a determined period of time, insurance measures or restriction of certain rights, such as: blocking the accounts, restriction of patrimony transfers of the issuing or blockage of securities or other financial instruments for a period of maximum 2 weeks.

7. Employment and labor regulatory authorities

The Ministry of Labor and Social Solidarity is the regulatory authority in this matter. The legal frame of Romanian labor relations is the Labor Code and the National Collective Labor Agreements, providing the rights and obligations of the employers and of the employees. The general labor conditions are expressly set forth in several regulations and laws.

The completion of the obligations of the employers – established by Law 130/1999 amended, regarding the employees' protection measures – is under the supervision and observance of the Ministry of Labor and Social Solidarity and the General Labor and Social Protection Departments.

Furthermore, the Ministry of Labor and Social Solidarity issues general norms, and other national interest regulations, regarding labor security and labor protection, and supervises – by specialized authorities – the compliance to the law.

The Ministry of Labor and Social Solidarity is entitled to legally sanction in case of breach of legal labor obligations.

8 Statute of limitation/prescription date

8.1 The shareholders'

The time limitation for lawsuits deriving from the company contract or from other operations is of 3 years set forth by Decree 167/1990. For several proceedings of the shareholders against the General Assembly decisions, there are other time bar terms, provided by Law 31/1990.

The shareholders can institute the opposition proceedings against the General Assembly decision to amend the Act of Incorporation in 30 days from the publication date in the Official Gazette of the decision to amend or of the Act of Incorporation (art. 61 and 62 of Law 31/1990).

Furthermore, the shareholders are entitled to sue the wrongful General Assembly decisions, in breach of law or the Act of Incorporation. These decisions can be opposed in 15 days from publication in the Official Gazette (art. 131 of Law 31/1990). We would like to mention the fact that the last two terms mentioned above are loss terms and not time bar terms.

8.2 . The statutte of limitation in case of non execution of the provisions of the contract

In case the terms of the commercial contracts are not executed or are executed wrongfully, the right to request the execution of the obligations has a statute of limitation of 3 years from the due date of the obligation. Regarding the non-assertive rights (the author right, etc), the right to institute proceedings has no term of time bar.

8.3 The statute of limitation in case of discrimination

All Romanian citizens are entitled and guaranteed the right to work, irrespective of their sex, nationality, race or religion, political convictions and social origins, according to the Labor Code, art. 2.

In case of breach of the above-mentioned right, the employee is entitled to sue the company by means of an action of damages in 3 years from the date of prejudice.

There is no record of such lawsuits in Romania.

8.4 The statute of limitation for sexual harassment actions:

Sexual harassment is considered a penal felony and the penal liability is prescribed in 5 years from the date of the infringement.

8.5The statute of limitation for the employee in case of termination of the labor contract

The employees are entitled to appeal to court in 30 days from acknowledgement of the unilateral decision to amend, suspend or terminate the labor agreement (art. 73 letter "a" of Law 168/1999).

The compensations for damages can be requested in 3 years from the date of the damage produced by the employer to the employee.

8.6 The statute of limitation for tax evasion

The time bar term for establishing the taxes in case of fiscal evasion is of 10 years from expiration of the term to deposit the return of income, provided by art. 25 of Government Ordinance 70/1997.

7.3. **The statute of limitation for tax authorities actions**The tax authorities have a to establish the profit tax, the differences of taxes and the delay penalties are prescribed in the following terms:

- 5 years from expiring date of the term to deposit the return of income;
- 5 years from the last legal term of payment of taxes in case the law does not provide the obligation to deposit such declaration;
- 5 years from the taxpayer's notification of the taxes established by the fiscal authorities.
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8. Law Evolution regarding the shareholders' and minority shareholders' rights

First provisions regarding the shareholders' rights in the Romanian law are comprised in the Commercial Code from 1887, represented and developed in the Commercial Code from 1938.

Between 1945 and 1989, most of the legal provisions from the Commercial Code, including the ones regarding corporate law, have become obsolete, due to organization of Romanian economic system, which has enforced the planned economy instead of private initiative.

After 1989, in view of apparition of the market economy, Law 31/1990 has set forth the rights and obligations of shareholders or associates, according to the type of company.

With respect to the protection system of minority shareholders, there have been legal provisions starting with the 1887 Commercial Code. Nevertheless, there is no specific definition of the minority shareholders. The amendment of Law 31/1990, comprised in the Emergency Ordinance 32/1997, distinguishes a series of provisions that, directly or indirectly, refer to the protection of minority shareholders. In addition to these legal provisions, we could mention several other law regarding the minority shareholders, such as Law 58/1998 regarding the banking activity, defining the company under effective control as the company in which a legal or a natural person holds at least 50% of the votes (art. 3 align. 1 of Law 58/1998). Another example would be Law 52/1994 regarding movable assets and stock exchange, in Chapter VI regarding the "Investors' Protection".

All the legal steps for protecting the interests and rights of minority shareholders mentioned above are still not sufficient, considering the fact that they are more restricted at present than the ones comprised in the 1887 Commercial Code.

9. The applicability of foreign judgments

The foreign judgments are applicable in Romania in compliance with the provisions of Law 105/1992. There are two appliance procedures, according to the law, one of recognition and one of execution.

The recognition of foreign judgments is of full right or by judgment of Romanian court of law. The recognized foreign judgment has the same authority as a Romanian judgment, according to art. 167 of Law 105/1992.

The full right recognition of a foreign judgment is applicable for:

- decisions regarding the civil statute of the citizens of the respective country;
- decisions regarding the civil statute of the citizens, pronounced in a different country but recognized by the specific country of the party;

The legal recognition of foreign judgments operates in case the following conditions are cumulated, in accordance with art. 167 of Law 105/1992:

- the decision is final, according to the local law;
- the court of judgment was competent;
- there is reciprocity between the effects of foreign judgments in Romania and the respective country.

The legal recognition of foreign judgments can be denied in case:

- the decision is resulted from fraud in foreign procedure;
- the decision is in breach of Romanian International Private Law public order;
- the litigation has been decided between the same parties by, even non definitive, judgment, by the Romanian court or is in the course of judgment at the date of notification of the foreign court.

For a foreign decision to become executory with the same authority of a Romanian decision, the exequatur procedure shall be applied, with the following conditions:

- the foreign judgment belongs to a competent court of law;
- the foreign judgment is executory, according to respective local law;
- the foreign judgment is in accordance with the competent material law, according to international private law;
- the foreign judgment is not in breach of public order in international private law, by the provisions or execution;

- there is execution reciprocity between Romania and the respective country of judgment;
- the right to execution debt enforcement is not prescribed in accordance with Romanian law;
- the foreign judgment is not resulted from fraud in the foreign procedure;
- there is no prior Romanian judgment in the matter or prior notification of Romanian legal authorities.

Foreign judgments providing insurance measures or provisory execution cannot be enforced in Romania.

10. Can the directors and Officers be liable for punitive damages under Romanian law?

The Romanian Law provides the punitive/exemplary damages, and the definition of the term is that of an unassertive damage that prejudices certain moral human values. These moral values refer to the physical existence, health, corporal integrity, physical or psychical sensibility, affection, dignity, honor, prestige, etc as well as unassertive rights devolving from copyright.

It is generally accepted that the unassertive prejudices – punitive or exemplary damages – are potentially unlimited and extremely diverse, and can devolve from threatening, slandering, defamation, corporal injury as well as a result of labor relations, civil extra-contractual relations, administrative litigations, unfair competition, etc.

The general legal ground for the punitive/exemplary damages liability is the Civil Code, which sets forth "any human deed that prejudices another, compels the liable person to repair the prejudice" and "One is liable not only for the prejudice caused by his/her deed, but also for the ones caused by his/her negligence or imprudence".

Special laws regarding this issue, such as the law regarding contentious business falling under the competency of administrative courts or the law against unfair competition, complete this general legal ground.

The practice is confronted nowadays with an increasing number of demands for punitive/exemplary damages in penal law, in case of injury and slandering. Punitive/exemplary damages are also requested in labor litigations, more and more often.

As with respect to the evaluation of the damage, the recent legal literature considers that the establishing method of the amount of punitive/exemplary damages is the competency of the court. Moreover, there is no unanimous practice in this respect or objective criteria for establishing the amount of punitive/exemplary damages.

The administrators or the directors can be liable for punitive/exemplary damages in case it is proved that their deeds have contributed to the damage.

With respect to the insurance for punitive/exemplary damages, there are no provisions to expressly set forth regarding this type of insurance.

The insurance companies do not practice this type of insurance, in consideration of the information we obtained.

With respect to this type of insurance, the doctrine expressly provides only regarding the insurance for punitive/exemplary damages for doctors.

The information contained in this material is not, nor is it intended to be, legal advice or a legal opinion on which you may rely. The information in this material seeks to provide the reader with concise legal shorthand by way of general information on legal provisions regarding the administrators' and officers' liability in Romania. The economic market is now

very dynamic. This is the reason why the authors of this material wish to acknowledge anyone who is willing to obtain information regarding the administrators' and officers' liability of any kind in Romania to get, first of all, comprehensive professional advice.

CABINETE ASOCIATE DE AVOCATURA

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