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LEGAL SYSTEM OF AGRICULTURAL COMPANIES WITH LEGAL ENTITY

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Abstract: *From the point of view of the corporative organization with legal entity, in agriculture, the activity can be conducted either under the form of companies regulated by Law no. 31/1990, republished, or the form of agricultural companies regulated by the Second Title of Law no. 36/1991 regarding agricultural companies and other forms of association in agriculture, altered by the Emergency Ordinance no. 125/2006 starting with 26.05.2007, or the form of agricultural cooperative regulated by Law no. 566/2004 on the agricultural cooperative, the way it was altered. Such forms of company acknowledge a series of particularities, as they are destined in principle to agricultural exploitations of large dimensions, where are concentrated both real estates and capitals. The legal entity confers them an apparent independency of the patrimony, which is distinct from that of the members, but which, as against the recent regulation of the companies without legal entity and as against the notional delimitation of the patrimony of affectation, corroborated with the procedural institutionalization characterizing their constitution, no longer represent the acknowledged relevance. The analysis of these forms of the development of the activity in agriculture is yet of actuality, not only because they will continue existing in the Romanian economy, but also because they allow the infusion of capital and that of foreign models of organization of agricultural activities in forms already known.*

Keywords: *agricultural exploitations, legal entity, agricultural company*

INTRODUCTION

Recently, it can be acknowledged the praiseworthy effort of the lawmaker to modernize the legal framework of the company's incorporation, to adjust this legal institution to the realities of the contemporary economical life; an example in such sense being the abandon of obsolete notions of universal and particular company, or the investment of the (nonstock professional) company with legal personality etc. (Art.1881, para.(3) A company can be constituted with or without legal entity.)

Within the current research, we will examine, especially in the light of the provisions in the New Civil Code and the law of entrance into force of this organic law, the legal system of the agricultural company, form of company adopted with priority by the quasi-majority of agricultural entrepreneurs for the practical advantages it presents.

Despite all these, the lawmaker's attempt to unify the rules applicable to the great majority of legal relationships established between particulars, between natural persons and/or legal entities of private law, to which is added the professional's institution, generates a series of confusions at the reception of the new civil code. By virtue of the new civil code, where the difference between the various associative forms (associations, foundations and companies) is attenuated, where the distinction between nonstock professional company and company disappeared, all these forms of organization entering in the category of professionals, changes substantially the vision over the companies exploiting an economic enterprise.

MATERIAL AND METHOD

The new civil code maintains the duality of the company's institution [S.Angheni, M.Volonciu, C.Stoica, p.68] understood, on one hand, as a deed, on the other hand as a legal person, distinct from its members. The legal text surprises the complexity of the legal institution, the company being, in the first place, the agreement of two or more individuals convening to unite their efforts and resources in order to conduct, together, on their risk, certain activities, aiming to accomplish a common purpose: to obtain benefits – shared between them –, or to accomplish together a certain economy. To the extent to which they will consider opportune, the members of the

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company will take the necessary steps for the investment of the company with legal personality, and thus an autonomous authority will be founded, an independent legal subject.

It is added to all these a new dimension, which is the legal personality recognized by the lawmaker to the great majority of companies regardless of the object of activity, especially because of its multiple practical advantages presented by the creation of certain subjects of law distinct both in the relation with its own shareholders and in the relation with the third parties [D.D.Gerota, p.12].

In principle, the lawmaker leaves at the discretion of the founders the choice of the company's form to be constituted, thus respecting their freedom of association. In certain domains only, where the nature of the activity or the possible impact on the company produced by its development, the law narrows the founders' option over the company's form, by imposing a certain type.

In all cases, the shareholders will opt for a certain company form, taking into account the advantages they present as against to each case in particular and to the economic finalities which are accomplished by the different types of company [I.L.Georgescu, pp.26-28].

Taking into consideration the practical importance presented by this type of company, being the manner of organization of the economic activity preferred by the entrepreneurs, the agricultural company has met, all along the time, transformations which enriched and reconfigured its regime. Within this research, we propose to analyse in detail all these legal changes.

These forms of company acknowledge a series of particularities, being destined in principle to agricultural exploitations of large dimensions, where are concentrated both real estates and capital [S.D. Cârpenaru, p.48]. From the point of view of the organization, the activity in agriculture can be conducted either under the form of companies regulated by the Law no. 31/1990, republished, or the form of agricultural companies regulated by the Second Title of the Law no. 36/1991 on agricultural companies and other forms of association in agriculture, altered by the Emergency Ordinance no. 125/2006 starting with 26.05.2007, r, under the form of agricultural cooperatives regulated by the Law no. 566/2004 on the agricultural cooperation, the way it has been altered.

According to the law, the agricultural company, as the most important form of association in agriculture, is a private company with variable capital and a variable and unlimited number of shareholders. The companies may contribute, if it is had in view their object of activity, to the rational exploitation of the land, the use of machines and agricultural plants, to the capitalization of agricultural products etc. At the same time, as a particularity of this type of company there must be mentioned the fact that the agricultural company does not dispose of commercial character. On the other hand yet, by regulating the possibility of constituting a company for the exploitation of lands, law no. 36/1991 consecrated a solution different from that of the art. 5 Com.C., abrogated at present, in the sense that it recognizes, implicitly, the commercial character of the acts and operations of land exploitation effected by a commercial company.

The normative consecration of the agricultural company accomplished to the detriment of founding an economic enterprise in the theory of the affectation patrimony [R.I.Motica, p.35].

As any type of company, the agricultural company as well must accomplish certain substantive and procedural conditions in order to be valid. The minimum number of shareholders cannot be smaller than 10. At the same time, the quality of shareholder of an agricultural company can be acquired by submitting the memorandum of association or, after the constitution, by signing a statement which must contain the pieces of information identifying the signatory, the surface of agricultural land brought into use, as well as other goods, the account receivable included, with which the holders enter in the company, the number and value of the shares to be submitted.

At the constitution of an agricultural company, each shareholder assumes the responsibility to constitute a contribution to the social, which can have as object any movable and immovable good. Agricultural lands are submitted only for the company's use and the shareholders maintain their right of property over them. When entering into an agricultural company, all movable and immovable goods, as well as the animals, will be evaluated in order to determine the shares due to

each associated member. Within the limits of the contribution, the shareholder becomes debtor of the company, and after its payment, full creditor of the company, with all the consequences resulting from this quality. By not subscribing the contribution has the signification of the shareholder's non-execution of the assumed obligation with consequences provided by the law. The social capital is formed by shares, of equal value, which size cannot be less than 1 lei each.

The memorandum of association of the agricultural company, must accomplish, at its turn, the minimum exigencies provided by art. 1179 Civ.c., corroborated with art. 1325 Civ.c. for its valid existence: the capacity of the authors to conclude such agreements, the consent of its author, a licit determined object, a licit moral cause, to which are added, to the extent to which the law provides expressly, a particular form. We also add certain specific conditions of the memorandum of association, such as the concept of *affectio societatis*.

In the case of the agricultural company, the memorandum of association, which expresses the agreement of the shareholders to constitute a common fund from their individual contributions, with the intent of collaborating to conducting an agricultural activity with the purpose of obtaining a profit and of sharing the results, incorporates the provisions of the memorandum of associations and the statutes.

Despite the commercial companies where, usually, the memorandum of association is presented under the form of private deed, the memorandum of association of the agricultural company is presented under an authenticated form.

The valid incorporation of an agricultural company as subject of law implies crossing a procedure and accomplishing certain formalities, subordinated to the condition of form lato sensu, imposed by the law.

The agricultural company, like any other form of company regulated by the Law no. 31/1990, acquires legal personality from the moment of its incorporation with the observance of the conditions established by the law, being a legal entity with own will [O. Căpățină, p.133].

Having its own subjectivity, the agricultural company shows itself in the field of legal relationships, as it is a holder of rights and liabilities, distinct from those of the shareholders, assembling all the constitutive elements of a legal entity of private law: a self-standing organization and own patrimony, affected to the accomplishment of a licit and moral purpose, according to the general interest. As a consequence, the agricultural company has capacity of competence and exercise, being the holder of rights and liabilities, it participates directly and immediately within the legal relationships and retorts to the third parties for the obligations assumed. Such any subject of law, the agricultural company individualises within the framework of legal relationships by means of: brand, headquarter and/or subsidiaries.

As any other legal entity, the agricultural company does not have an organic existence, for which reason, its will is expressed by its authorities, respectively: management, execution and control authorities. The company's will is formed within the GMS and is brought to its accomplishment by the executive authority which is the council of administration. The control of the administrators' activity is accomplished by the shareholders who have the quality of censors.

Starting from the specific of the attributions, within the agricultural company we can distinguish ordinary and extraordinary meetings, although the lawmaker regulates these types of general meetings exclusively within the joint stock companies regulated by the law 31/1990. In principle, the ordinary general meeting will be called a least once a year, while the extraordinary general meeting, any time considered necessary.

The company's will is expressed by the general meeting, but is brought to its accomplishment by the administration authorities of the company. According to the law no. 36/1991 the agricultural company is administered by an administration council. The number of the council's members must be at least 3, but not bigger than 13, chosen from the shareholders. The council of administration will choose a president and vice-president within its members. In the absence of the president or the vice-president, the president's role will be played by the oldest member in the council of administration.

For the validity of the deliberations of the administration council, it is necessary the presence of at least half plus one of the administrators. The decision is adopted with the majority of 2/3 of the number of the present members.

The company's control of management is ensured by the censors. Thus, each year, one to three main censors and one to three suppliant censors are elected within the shareholders during the general meeting. The censors deliberate within a committee with the participation of the staff and the decision of the simple majority.

CONCLUSIONS

The analysis of these forms of conducting an activity in agriculture is yet highly topical, not only because they will continue existing in the Romanian economy, but also because they allow the infusion of capital and of foreign models of organization of agricultural activities under already known forms.

The choice of the form of association by landowners, as a way of conducting their activity, is determined by the low individual possibilities of capitalization of own household, which does not allow it to ensure all necessary material means for its development. By association, especially because the shareholders dispose of certain material means, there can be operated in the sense of the annihilation of unwanted effect of the lack of capital.

The difficulties with which are confronted small agricultural producers justify the necessity of association are determined by the difficult cooperation of the units supplying services, especially when the surface of exploration is reduced.

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