Analele Universităţii "Dunărea de Jos", Galaţi - Fascicula XXII
***Drept şi Administraţie Publică* Anul II, Nr. 1 – 2009**
Galati University Press ISSN 1843 -8334

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CONDITIONS REQUIRED FOR APPOINTING AN ADMINISTRATOR

Abstract

Appointing administrators is traditionally done by a double manifestation of will between associates and further between associates and administrator. This union between stating the will between associates reunited with accepting the administrator gets the form of the mandate.

When considering the role of the administrator function, the law enforces the fulfilment of some conditions for being able to accede to it.

The conditions requested for getting the administration function are divided into personal conditions and partner conditions. When grouping them, there is taken into account the criterion how these aim the administrator's individual person or are enforced by the trading company, by taking into account the intrinsic connection between the administrator and company.

The appointment of the administrator is traditionally done by a double manifestation of will[1] between the associates and further between associates and administrator. This union between stating the will between associates reunited with accepting the administrator gets the form of the mandate.

The mandate conferred to the administrator does not need, prior to the amendment of Law no. 31/1990, an express acceptation, being sufficient, according to art. 376 Commercial Code, the tacit acceptance: "*The merchant who does not want to get a task must bring into notice to the principal about the non-reception, as soon as possible.*" The tacit acceptance could consist in unfulfilling operations for the company's commerce, handing on of

[1] Ghe. Piperea, *Societăţi comerciale, piaţă de capital. Acquis comunitar*, All Beck Publishing House, Bucharest, 2005, page 126 (quoted hereinafter *Companies*). The appointment of the administrator is based upon the decision of the associates' general assembly, taken into account either at forming the trading company or further during the life of the trading company. The author suggests the qualification of appointing the administrator as being a double of the convention: appointment into the function (manifestation of will between the associates) and the mandate (the convention between the associates and administrator).

signatures to the trade registry, operations which would highlight the accomplishment of the tasks specific to the administrator function[1]. However, in the light of the current regulation, art. 153[12] par. (3) of Law no. 31/1990 "*for the appointment of an administrator (…) to be valid from a legal point of view, the person appointed must expressly accept it*". As consequence, Law no. 31/1990 derogates from the joint right, art. 1533 par. (2) Civil Code and art. 376 Commercial Code according to a doctrinaire opinion[2], this exact express acceptance of the administrator's mandate represents the existence of a contract between the administrator and company, a mandate contract of special features. This provision is also applied only to the limited trading companies and, as consequence, the rule of tacitly accepting the mandate is applied to the trading companies of people.

When considering the role of the administrator function, the law enforces the fulfilment of some conditions[3] for being able to accede to it.

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[1] In doctrine, before the legislative change in 2006, respectively by Law no. 441 dated 27th November 2006, published in "The Official Journal of Romania", no. 955 of 28th November 2006, the occurrence of a confusion was found out regarding the tacit acceptance of the mandate of administrator referring to the plurality of this mandate of legal labour report, which would create difficulties in precisely knowing at some point the administrator's position and attributions in society in the relations to the society or third parties. As solution to this problem, the conclusion of an administration contract was suggested (similar to the management contract), by the administrator with the trading company – Ghe. Piperea, *Societăţile*, quote page 126. The idea is also found at St. Cărpenaru, S. David, C. Predoiu, Ghe. Piperea, *Societăţi comerciale. Reglementare. Doctrină. Jurisprudenţă* All Beck Publishing House, Bucharest, 2002, page 312-314.

[2] Ghe. Piperea, *Drept comercial*, vol. I, C.H. Beck Publishing House, Bucharest, 2008, page 203 (quoted hereinafter *The Course*). The administrator's appointment would be an offer of contracting, which, followed by the acceptance of the offer, values the contract.

[3] The conditions requested for getting the administration function are divided into personal conditions and partner conditions - N. Dominte, *Organizarea şi funcţionarea societăţilor comerciale*, C.H. Beck Publishing House, Bucharest, 2008, page 251. When grouping them, there is taken into account the criterion of how these aim the administrator's individual person or are enforced by the commercial company, by taking into account the intrinsic connection between the administrator and society. To my opinion, all conditions aim the administrator and surely they are enforced by law, not by the society. These criteria only aim the connection between the person of the future administrator and trading company,

1.1. Administrator's capacity

According to art. 73[1] of Law no. 31/1990 "*Those persons whom, according to art. 6 par. (2) cannot be founders or administrator, managers, members of the surveillance council and directorate, censors or financial auditors, and if they have been chosen, they are in incapacity of rights*". Art. 6 par. (2) stipulates that "*those people whom, according to the law, are incapable (…)*". This interdiction is explained by taking into account its quality as representative of the trading company, proxy of the associates, the administrator must have full capacity of exercise[1] for being able to draw up legal documents for accomplishing the social aim. This is also in fact one of the conditions of the mandate, meaning that the person of the proxy is to have the capacity requested by law for concluding the document which it intermediates.

It must also be taken into account the fact that the administrator is the person exercising the attributes of the social property right[2], accomplishing both provision acts as well as for preservation and administration[3]. This solution is applied to all forms of the trading company. In the situation where an administrator would be appointed by breaching this condition, the sanction intervening is to incapacitate him/her of the rights conferred by means of the administrator function. According to this solution, even the documents drawn up by an administrator lacking the capacity of exercise shall be nullified.

A person lacking capacity of exercise or who has limited exercise capacity, cannot get and exercise the administrator function of a trading

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the so-called "personal" criteria do not take into account the individual person of the administrator in a private environment, but in connection to its relation with the trading company.

[1] St. Cărpenaru, Managing the trading companies in regularising Law no. 31/1990, in the Magazine of commercial law no. 2/1993, page 24-25.

[2] Ghe. Piperea, *Societăţile*, quote page 127; St. Cărpenaru, S. David, C. Predoiu, Ghe. Piperea, quote page 437.

[3] It must be taken into account that by accomplishing trading deeds, the administrator does not acquire the quality of merchant, as it does not meet the third condition, namely to only accomplish them personally. As consequence, he/she fulfils the duty tasks for his/her employer, not at all does he/she try to bind for own sake – St. Cărpenaru, *Drept comercial român*, 7th edition, Universul Juridic Publishing House, Bucharest, 2008, page 74-75.

company. Thusly, minors under 14 and legally prohibited people[1] lack the capacity of exercise, are incapable and cannot draw up legal documents on their own name.

The situations stipulated in art. 6 par. (2) of Law no. 31/1990 aims the interdiction of appointing the administrator, manager, member of the surveillance council and directorate, censor or financial auditor. If these people had such functions and the incapacity has happened after their appointment into the function, the sanction intervening will be the incapacity and interdiction of occupying such functions in the future.

The law of the trading companies intervenes and increases the exigencies regarding the consideration of the persons who have the capacity of exercise for performing a commercial activity, by expanding the range of the incapacities and over minors with capacity of exercise, to the effect of Decree no. 31/1954. This is due because those minors who have a limited capacity of exercise cannot conclude deeds of settlements unless they have the approval of the legal representative and by prior authorisation of the tutelary authority, the situation incompatible with the meaning of the documents, facts and trading operations.

The requirement of the entire capacity of exercise is applied to the natural person administrator as well as to the legal entity administrator.

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[1] According to art. 11 of Decree no. 31 of 30th January 1954 regarding legal entities and natural persons. According to art. 9 of the same Decree: *"The minor who has reached the age of fourteen has limited capacity of exercise. The minor with limited capacity draws up the legal documents, by parents' or tutor's previous approval."* Art. 10 of the Decree orders: *"The minor who has turned fourteen and may draw up the labour contract or enter into a collective agricultural farm or into another cooperative organisation, without needing his/her parents' or tutor's approval. In the case where the minor between 14 and 16 years of age draws up a labour contract or enters into a collective agricultural farm or into a cooperative manufacturing organisation, a medical notification will also be needed, besides parents or tutor's prior approval. The minor who is in the situation stipulated in previous paragraphs exercises alone the rights and thusly executes the obligations sprung from the labour contract or from the quality of member of the collective agricultural farm or of another cooperative organisation and has by himself/herself the amounts of money he/she has gained by means of own work. The minor with limited capacity has the right, without needing parents' or tutor's approval, to deposit to the state savings institutions and to use these deposits, according to the stipulations of the keeping house regulations."*

1.2. Administrator's respectability

According to art. 73[1] reported to art. 6 par. (2) of Law no. 31/1990, "*those persons whom, according to the law (…) have been convicted for fraudulent management, abuse of trust, forgery, use of forgery, fraud, dilapidation, false witness, taking and giving bribe, for the crimes stipulated by Law no. 656/2002 for preventing and sanctioning the money laundering, as well as for installing some prevention measures and for fighting the finance of terrorism deeds, by ulterior amendments and addendums, for the crimes stipulated by art. 143 - 145 of Law no. 85/2006 regarding the procedure of insolvency or for those stipulated by this law, with its ulterior amendments and addendums*"[1].

From what is exposed by the legislator, it results the administrator must have an intact morality. This condition herein is applied to all trading companies, regardless of their legal form[2]. The administrator's respectability is a criterion according to which a trading company can be qualified as being credible or doubtful, this condition exceeding the category of criterion of option, administrator's eligibility. To the same extent, the administrator's respectability is to create the safety and trust of the contracting parties of the trading company regarding the treated operations.

It is deemed[3] that the administrator becomes the image of the trading company regarding the relations with the other people, taking into account his/her quality as proxy of the company, thusly influencing the trust barometer of the company.

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[1] Supreme Court of Justice, commercial section, decree no. 511/1994, in the Magazine of commercial law no. 3/1995, page 156 – the interdiction is applied only in the case of final and irrevocable conviction, the incident of presumption of innocence *according to* St. Cărpenaru, quote page 233. Also see Ghe. Piperea, *The Course*, page 207; N. Dominte, quote page 253/-254; E. Munteanu, *Certain aspects on the legal statute of the administrators of trading companies (I)*, in the Magazine of commercial law no. 3/1997, page 38-41; D. Şandru, *Societăţile comerciale în Uniunea Europeană*, University Publishing House, Bucharest, 2006, page 237.

[2] Supreme Court of Justice, commercial and economical section, decree no. 225/1992, in the Magazine of commercial law no. 5/1994, page 73-74.

[3] N. Dominte, quote page 254; C. Micu, *Organizarea administraţiei societăţii comerciale pe acţiuni Unitary system*, in the Romanian Magazine of business law no. 2/2007, page 60.

It is true the administrator is the one coming into direct connection with the third parties, representing, within the limits of his/her mandate[1], the company, but his/her importance must not be exaggerated, by going as far as qualifying his/her position as being a trust barometer of the company. I think the trust the trading company benefits by is formed by several elements and not only by the administrator's reputation. Thusly, the share capital is an element which leads to the formation and preservation of the trading company's trust, the bigger its value, the more will the company benefit by reliability. This is because the company's creditors shall be certain that in the debtor company's patrimony, there must be goods of at least the value of the share capital, having thusly a guarantee regarding the sufficiency of their claims. The company's credibility related to the value of the share capital is also given by the fact that this share capital is fixed for the entire period of the trading company. Other elements that would lead to the formation and preservation of trust in the company could be the number of employees, social assets, the way in which the company pays its debts, on due term or even before it, the eventual incidents of payment in the history of performing the commercial relations registered to the Central of Payment Incidents, warranties offered by the bank financial credit institutions, guarantees offered for the works performed, the goods manufactured or sold merchandises, the age of the company within the range of commercial activities, the appointment of an independent administrator etc. Certainly, none of these elements does not uniquely and remotely determine the formation of the opinion on the trading company, but they all have a contribution regarding the qualification of the trading company as being credible or doubtful. As consequence, the opinions according to which the administrator of the company would be the barometer of the company's trust are not viable. The administrator's respectability also contributes to the blazon of the

[1] High Court of Cassation and Justice, commercial section, decree no. 1279/27.03.2008, www.scj.ro/jurisprudenta.asp: *"The aim targeted by the legislator by the regulation instituted by art. 55 of Law no. 31/1990 amended, was that of protecting the interests of the third parties in the relations with the trading company, against certain limitations decided by the company regarding the powers conferred to the company's representatives. To this effect, according to art. 55, par. (2) of the law, the clauses of the Articles of Incorporation…. , which limits the powers conferred by law to the statutory bodies of the company, are unopposable to the third parties, even if they have been published."*

trading company, but in competition with all other configuration factors of the company's reputation.

1.3. Administrator's citizenship[1]

Law no. 31/1990 does not stipulate any restriction regarding the administrator's citinzenship. To this effect, art. 81 of Law no. 31/1990 provides that in the case of appointing a natural person as administrator, the Articles of Incorporation must consist in: „*the surname, first name, personal identification number and, if applicable, its equivalent, according to the applicable national legislation, the place and date of birth, domicile and citizenship*". As consequence, this function of administrator, may be obtained by a Romanian or foreign citizen, under the condition that the constitutive documents of the company would not contain derogatory provisions, as foreigners have, under the conditions of the law, all civil rights Romanian citizens also have.

In the case where a legal entity is appointed as administrator, the Article of Incorporation must consist in: "*the name, headquarters, nationality, registration number in the trade registry or unique code of registration, according to the applicable national law.*" As consequence, the law does not prohibit in any way the appointment of an administrator of legal entity of a nation other than Romanian.

1.4. The quality of administrator's associate

According to art. 77 par. (1) of Law no. 31/1990: "*Those associates representing the absolute majority of the share capital may choose one or several administrators among them (…).*" It unequivocally results the faculty

[1] The principle of this condition is deemed to be in the legislation of the Northern countries, thusly Denmark conditions the appointment into the function of administrator as Danish resident or citizen of a member state of the European Union; on the same line, Finland and Sweden enforce the condition of at least half of the members of administration council and chairman to be residents in the states of the European Economical Space – N. Dominte, quote page 255. When fighting this hypothesis, the community jurisprudence, Commission of the European Communities vs. Kingdom of the Netherlands, Case C-299/02, J.O.C.E., C 300 of 4th December 2004, p. 10, by contesting the condition enforced by the Dutch state that the administrators of a maritime company should be citizens of a member state of the European Union or European Economical Space for registering the boats under Dutch pavilion.

conferred by the legislator of choosing whether the administrator is associate or a third party.

This solution is also expressly given by art. 7 letter e which orders that the company's Articles of Incorporation shall collectively contain in limited partnership or limited liability: *"associates who represent and administrate the company or non-associated administrators, their identification data, powers that were conferred to them and if they try to exercise them together or separately*[1]*"*.

Certainly, the provisions presented refer collectively to the company, in limited partnership or limited liability, but these can also be extended to the trading public limited company.

However, in the case of partnership companies, there are applied the provisions of art. 88 and 188 of Law no. 31/1990: *"The Administration of the limited partnership company shall be committed to one or several active associated partners"; "The administration of the company is committed to one or several active partners"*. As consequence, the Law of the trading companies derogatorily orders that in the case of the limited and sleeping partnership, the administrators are only between associates, by thusly complying with the principle of the connection that must exist between the associates and in the consideration of which the people company was founded.

A new notion introduced by Law no. 441/2006 by means of which Law no. 31/1990 was amended, is that of independent administrator[2].

According to art. 138[2] of Law no. 31/1990[3]: *"When appointing the independent administrator, the general assembly of the shareholders shall take into account the following criteria: a) should not be the manager of the company or a company controlled by him/her and not to have fulfilled such a function in the past*

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[1] Also see A. Beleanu, *Răspunderea administratorilor şi directorilor executivi ai unei societăţi comerciale*, in the Magazine of commercial law, no. 10/2000, page 137 and following

[2] The notion of independent administrator has its origin in the legislation of the United States of America and Great Britain, being successively borrowed along with the notion of corporative governing. The aim of these independent administrators is in fact to create a counter power which would balance and equilibrate the chairman's or general manager's infinite power – Ph. Merle, *Droit commercial. Sociétés commerciales*, 11e edition, Dalloz Publishing House, Paris, 2007, page 274-275 and 416.

[3] These criteria are contained in Appendix II of the European Commission Recommendation no. 162/2005.

5 years; b) not to have been an employee of the company or of a company controlled by him/her or to have had such a labour report in the past 5 years; c) not to receive or to have received an additional remuneration from the company or a company controlled by him/her, or other advantages, other than those corresponding to his/her quality of non-executive administrator; d) not to be a significant shareholder of the company; e) not to have or to have had business relations with the company or with a company controlled by him/her, during the last year, either personally or as associate, administrator, manager or employee of a company which has such relations with the company, if, by means of their substantial feature, these are likely to affect objectivity; f) not to be or have been financial auditor during the past 3 years or employed associate of the current financial auditor of the company or of another company controlled by it; g) to be a manager in another company where a manager of the company is non-executive manager; h) not to have been non-executive administrator of the company for more than 3 mandates; i) not to have family relations with a person found in one of the situations stipulated at letter a) and d).

A definition of the notion of independent administrator is not given by law[1], by only indicating the criteria which his/her person may be individualised. It is however deemed[2] that the independent administrator must be from outside the company, without any connection with the natural persons or legal entities from the leadership of the trading company for a certain period of time and with whom no commercial legal operations have been concluded.

The Law does not necessarily enforce the appointment of an independent administrator. In the case of appointing such an administrator, he/she can contribute to increasing the credibility of the trading company.

[1] The European Commission's Recommendation no. 162/2005, contains Art. 13.1 a definition of the independent administrator, being deemed to be the person whom has no business, family relations or of any other kind with the company, the main associate or with the management and leadership structures likely to create a conflict of interests which can affect his/her objectivity.

[2] N. Dominte, quote page 258.

In order to contribute to the independence of the leadership structures, the German doctrine[1] has suggested the complete elimination of employees from the leadership structures of the trading companies.

In Belgian Law, the Buysse Code regarding the proposals for the non-transacted companies in the corporative governance, suggests the appointment of independent administrators for balancing the composition of the members of the leadership bodies[2].

1.5. Plurality of functions

Law no. 31/1990 institutes two limitations regarding the concomitant exercise of the administrator function.

1.5.1. Interdicting plurality. According to art. 137[1] par. (3) of Law no. 31/1990 *"During the performance of the mandate, the administrators cannot conclude a labour contract with the company. In the case where the administrators have not been appointed from the employees of the company, the individual labour contract is suspended during the period of the mandate."* In order to exercise the function of administrators, they shall be subject of the rules of the mandate and shall conclude a management contract with the company, referred to in art. 144[1] par. (6) of Law no. 31/1990[3].

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[1] A. Kouloridas, J. von Lackum, Recents developments of corporate governance in European Union and their impact on the German legal system, in German Law Journal, vol. 5, no. 10/2004 according to N. Dominte, quote page 259.

[2] It is thusly deemed that the independent administrators shall contribute by an objective vision onto the company, impartial advice, increase of discipline and responsibility, assuming an important role in situations of crisis, watching over the succession of managers etc. To this effect, in order to accomplish their role, the company must proceed with training them, but also with fully and justly informing them.

[3] C. Cucu, M. Gavriş, C. Bădoiu, C. Haraga, Law of the trading companies, no. 31/1990. Bibliographical references. Legal practice. Decisions of the Constitutional Court. Annotations, Hamangiu Publishing House, Bucharest, 2007, page 300. Art. 144[1] par. (6) of Law no. 31/1990 orders: "The contents and duration of the obligations stipulated at par. (5) are stipulated in the management contract." In the previous regularisation, the administrator's mandate could have been an independent one or could be burdened either by the quality of shareholder or the employed one, in the case of doubling the mandate by a labour report – Ghe. Piperea, Obligaţiile şi răspunderea administratorilor societăţilor comerciale.

The explanation of the solution of law resides in the incompatibility between the quality of associate of the trading company and that of employee of the trading company[1]. On the same line, the interdiction also imposed by the subordinate status is explained[2], which the employee has regarding the associates, while the administrator may draw up legal documents on behalf of the company. The provision of the law has an imperative feature and its breach would lead to incapacitating the person from the administrator function.

Although the law only refers to the public limited companies, it is deemed[3] that these provisions are also equally applicable to the other form of trading companies.

1.5.2. Limiting plurality. Art. 153[16] of Law no. 31/1990 stipulates that *"A natural person may concomitantly exercise 5 mandates at the most by the administrator and/or member of the surveillance council in public limited companies the headquarter of which is on the Romanian territory. This stipulation is applied to the same extent to the natural person administrator or member of the surveillance council, as well as to the natural person permanent representative of a legal person administrator or member of the surveillance council. The limitation of the plurality of mandates does not operate in the case where the one elected in the administration council or in the monitoring council is the owner of at least a fourth*

Noţiuni elementare, All Beck Publishing House, Bucharest, 1998, page 67 and following (quoted hereinafter The Responsibility).

[1] St. Cărpenaru, quote page 234; S. David, F. Baias, Răspunderea civilă a administratorului societăţii comerciale, în Dreptul, no. 8/1992, page 14; I. Schiau, T. Prescure, Legea societăţilor comerciale no. 31/1990. Analize şi comentarii pe articole, Ed. Hamangiu Publishing House, Bucharest, 2007, page 417; C. Duţescu, Drepturile acţionarilor, 2nd edition, C.H. Beck Publishing House, Bucharest, 2007, page 343. In the case where the person appointed into the administrator function opts for maintaining the quality of company's employee in the prejudice of the administration function, then the position becomes vacant and the general assembly must be called together for appointing an administrator, according to art. 111 of Law no. 31/1990. The solution suggested by the legislator is based on the antithetic feature of the legal relations of the two qualities. This has been suggested in doctrine and prior to the amendments made by Law no. 441/2006 - St. Cărpenaru, Drept comercial român, 5th edition, All Beck Publishing House, Bucharest, 2004, page 219.

[2] C. Cucu, M. Gavriş, C. Bădoiu, C. Haraga, quote page 302.

[3] St. Cărpenaru, quote page 234.

of the total of the company's shares or is a member in the administration council or in the surveillance council of a public limited company holding the indicated fourth. The person breaching the stipulations of this article herein is bound to resign from the function of member of the administration council or of the surveillance council, exceeding the maximum number of mandates stipulated in par. (1) in a term of one month since the date of occurrence of the situation of incompatibility. Upon the expiration of this period, he/she shall lose the mandate obtained, by exceeding the legal number of mandates, in chronological order of designations and shall be bound to return the remuneration and other benefits received by the company where he/she has exercised this mandate. The deliberations and decisions which he/she has taken part in when exercising that respective mandate remain valid".

Thusly, currently, a natural person may concomitantly exercise 5 mandates at the most, of administrator, in the surveillance councils of some public limited companies or in other trading companies, respectively 5 mandates at the most of administrator and member of the surveillance council. The limitation of the plurality of mandates regards not only the administrator natural person, but also the permanent representative of the legal entity administrator.

The provisions of the Law are applied regarding the unitary system as well as the dualist leadership system of the trading public limited company. This plurality is prohibited, as it is also peremptorily stipulated[1], only on the Romanian territory, by being able to exceed the number of mandates imposed by the Romanian law in the case of accomplishing such functions to trading companies in other countries. However, the permissibility of this plurality of administrator mandates must be taken into account, of international feature, by all legislations of those countries where those respective companies are registered.

The provision regarding the plurality of mandates in the Romanian legislation is also encountered in the French legislation, where it is stipulated that an administrator of an anonymous company may hold maximum 5 mandates of administrator or as member in the surveillance

[1] N. Dominte, quote page 260-261. The opinion thusly stated deems the old formulation of Law no. 31/1990, in Art. 145 par. (1) was much better, as it concomitantly prohibited the plurality of three mandates, without geographically restricting this plurality. It was understood from here that a person could not accomplish this function in more than three mandates, regardless of the nationality of the trading companies.

council[1]. To the same line, the mandates of general manager, member of the directorate are restricted to one mandate or of sole general director.

The German legislation, when considering the necessary time that must be affected to the associate activity, limits the plurality of more than five mandates in surveillance council and not more than one mandate as manager in trading companies[2].

The limitation of the plurality of mandates aims the administrator natural person, as well as the legal entity administrator, by its permanent natural person representative.

The interdiction does not take into account the legal entities who have the quality of member into the administration or surveillance council and who can simultaneously have an unlimited number of mandates. The only restriction is that their representatives as natural persons do no breach the legal limitations[3].

Besides the mentioned limitations, Law no. 31/1990 also stipulates a special case in Art. 153^{15} "*In the unitary system, the managers of a public limited company and in the dualist system, the members of the directorate, without the authorisation of the administration council, respectively the surveillance one, will not be able to be managers, administrators, members of the directorate or of the surveillance council, censors or, according to the case, internal auditors or associates with unlimited liability, in other competitive companies or having the same object of activity or exercise the same commerce or a competitive one, on one's own or on another person, under the punishment of revoking and responding for damages.*" In order to fulfil this stipulation, art. 153^{8} par. (2) of Law no. 31/1990 stipulates: "*By the Articles of Incorporation or by the decision of the shareholders' general assembly, specific conditions of professionalism and independence can be set forth for the members of the surveillance council. In evaluating the independence of a member of the surveillance council, at least the criteria regularised at art. 138^{2} par. (2)^{30}" must be complied with.*

The additional provision regarding the managers of a public limited company in the unitary system and the members of the directorate in the

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[1] Ph. Merle, quote page 418-419. Prior to this limitation, the French legislation limited the plurality to eight mandates. The legislative reform in France by Laws of 29th October 2002 and 1st August 2003 has reduced the limitation to five mandates on the territory of the country.

[2] A. Kouloridas, J. von Lackum, quote page 1282 according to N. Dominte, quote page 261.

[3] I. Schiau, T. Prescure, quote page 493.

dualist system is justified by the general obligation they have of prudence, diligence, loyalty and confidentiality in relation to the company. These obligations can only be complied with by eliminating any possible conflict of interests between them and the company, by participating in the leadership of other trading companies. The legislator lets the social will to approve or reject this plurality depending on the actual danger and possible threat which it would represent for the good performance of the company's activity. The acceptance may also intervene *a posteriori*, in the situation where the administration council or the surveillance council finds out afterwards about the incidence of these interfering factors in the company's life and, by actually evaluating their dimension, it deems possible such a plurality. The authorisation, although it must be mainly be precursory, it must be express and unambiguous, for avoiding potential misunderstandings. To the extent where the actual situation allows it, the authorisation may also be tacit if it would undoubtedly result the social will in the sense of allowing such a plurality in everything[1].

Regarding the limited liability companies, according to art. 197 par. (2) of Law no. 31/1990 *„Administrator cannot receive, without the authorisation of the associates' assembly, the administrator mandate in other competitive companies or having the same object of activity, or to perform the same trade or another competitive one on one's own or on another legal entity's or natural person's behalf, under the sanction of revoking and responding for damages."*

1.6. Stipulations.

In doctrine[2], it is suggested to be deemed as condition for exercising, according to the administrator function, the quality of natural person or legal entity of the administrator. Regarding this aspect, I deem it cannot be a matter of a condition for exercising the administrator function, but of a possibility which the company has of appointing a natural person or legal entity into this function. In the Romanian legislation, the exercise of the administrator function is not in any way conditioned according to the administrator being a natural person or a legal entity. As opposed to that, the stipulations in the case of the English, Italian or Portuguese legislative systems, where the compulsoriness of appointing a natural person among

[1] Regarding the future amendments of Law no. 31/1990, I believe it should be explicitly prohibited to fulfill

[2] N. Dominte, quote page 256-257.

administrators is stipulated, being a matter of a condition for fulfilling the administrator function[1].

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